

By: Thompson of Harris

H.B. No. 2398

A BILL TO BE ENTITLED

AN ACT

relating to grand jury proceedings; providing a punishment for contempt of court.

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).

1 SECTION 2. The heading to Article 20.012, Code of Criminal
2 Procedure, is amended to read as follows:

3 Art. 20.012. RECORDING OF GRAND JURY PROCEEDINGS [~~CERTAIN~~
4 ~~TESTIMONY~~].

5 SECTION 3. Articles 20.012(a) and (b), Code of Criminal
6 Procedure, are amended to read as follows:

7 (a) Except as otherwise provided by this subsection, all
8 statements made by the grand jury or the attorney representing the
9 state, all questions [Questions] propounded by the grand jury or
10 the attorney representing the state to a witness, [~~person accused~~
11 ~~or suspected~~] and all [~~the~~] testimony of a witness [~~that person~~] to
12 the grand jury shall be recorded either by a stenographer or by use
13 of an electronic device capable of recording sound. Deliberations
14 of the grand jury may not be recorded.

15 (b) The validity of a grand jury proceeding is not affected
16 by an unintentional failure to record all or part of the proceedings
17 as required by [~~questions propounded or testimony made under~~]
18 Subsection (a).

19 SECTION 4. Chapter 20, Code of Criminal Procedure, is
20 amended by adding Article 20.013 to read as follows:

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

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

1 indictment with respect to, a person described by Subsection (a)
2 only if the attorney representing the state presents material
3 evidence that was not known to the state before or during the
4 previous grand jury investigation.

5 SECTION 5. Article 20.02, Code of Criminal Procedure, is
6 amended by amending Subsections (f), (g), and (h) and adding
7 Subsection (i) to read as follows:

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

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

- 14 (1) permitted by Subsection [Subsections] (c); or
15 (2) provided by Article 20.036[, (d), and (e)].

16 (h) A subpoena or summons relating to a grand jury
17 proceeding or investigation must be kept secret to the extent and
18 for as long as necessary to prevent the unauthorized disclosure of a
19 matter before the grand jury. This subsection may not be construed
20 to limit a disclosure permitted by Subsection (c) or provided by
21 Article 20.036 [,(d), or (e)].

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

27 SECTION 6. Article 20.03, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 20.03. ATTORNEY [~~REPRESENTING STATE~~] ENTITLED TO
3 APPEAR. (a) In this chapter, "attorney ["~~The attorney~~]
4 representing the state [~~State~~]" means the attorney general
5 [~~Attorney General~~], district attorney, criminal district attorney,
6 or county attorney.

7 (b) The attorney representing the state [~~State~~] is
8 entitled to go before the grand jury and inform the grand jurors
9 [~~them~~] of offenses liable to indictment at any time except when the
10 grand jury is:

11 (1) [~~they are~~] discussing the propriety of finding an
12 indictment; or

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

14 (c) A witness who testifies before a grand jury, including a
15 witness who is an accused or suspected person, is entitled to have
16 an attorney present while the grand jury is questioning the
17 witness. The grand jury shall permit the attorney or the witness to
18 interrupt the questioning at any time so that the witness may
19 consult with the attorney outside the hearing of the grand jury.

20 SECTION 7. Chapter 20, Code of Criminal Procedure, is
21 amended by adding Articles 20.035 and 20.036 to read as follows:

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

23 (a) The attorney representing the state shall present to a grand
24 jury investigating an offense any evidence that is:

25 (1) favorable to the accused or suspected person;

26 (2) material to the offense being investigated; and

27 (3) in the possession, custody, or control of the

1 state or any person under contract with the state.

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

4 Art. 20.036. DISCOVERY. (a) Except as otherwise provided
5 by this article, if the state provides notice to the accused or
6 suspected person of the grand jury investigation, as soon as
7 practicable after receiving a request from an accused or suspected
8 person, the attorney representing the state shall produce and
9 permit the inspection and the electronic duplication, copying, and
10 photographing, by or on behalf of the accused or suspected person,
11 of any:

12 (1) offense reports, designated documents, or
13 designated papers arising from the alleged offense;

14 (2) designated written or recorded statements of the
15 accused or suspected person or a witness that arise from the alleged
16 offense, including witness statements of law enforcement officers;
17 and

18 (3) designated books, accounts, letters, photographs,
19 or objects or other tangible things that:

20 (A) are not otherwise privileged;

21 (B) constitute or contain evidence material to
22 any matter involved in the grand jury investigation; and

23 (C) are in the possession, custody, or control of
24 the state or any person under contract with the state.

25 (b) Subsection (a) does not authorize the removal of
26 documents, items, or information from the possession of the state,
27 and any inspection shall be in the presence of a representative of

1 the state.

2 (c) In the case of a pro se accused or suspected person, the
3 state shall permit the inspection or review of the document, item,
4 or information as provided by Subsection (a), but is not required to
5 allow electronic duplication as described by that subsection.

6 (d) The attorney representing the state may provide to any
7 accused or suspected person electronic duplicates of any document,
8 item, or information described by Subsection (a).

9 (e) Subsection (a) does not authorize the disclosure of:

10 (1) the work product of the attorney representing the
11 state in the investigation; or

12 (2) the work product of the state's investigators,
13 including the investigator's notes or reports.

14 (f) The rights granted to the accused or suspected person
15 under Subsection (a) do not extend to written communications
16 between the state and an agent, representative, or employee of the
17 state.

18 (g) If only a portion of the applicable document, item, or
19 information is subject to discovery under this article, the state
20 is not required to produce or permit the inspection of the remaining
21 portion that is not subject to discovery and may withhold or redact
22 that portion. The state shall inform the accused or suspected
23 person that a portion of the document, item, or information has been
24 withheld or redacted.

25 (h) The accused or suspected person, the attorney
26 representing the accused or suspected person, or an investigator,
27 expert, consulting legal counsel, or other agent of the attorney

1 representing the accused or suspected person may not disclose to a
2 third party any documents, evidence, materials, or witness
3 statements received under this article unless:

4 (1) a court orders the disclosure after notice and
5 hearing, on a showing of good cause and after considering the
6 security and privacy interests of any victim or witness; or

7 (2) the documents, evidence, materials, or witness
8 statements have already been publicly disclosed.

9 (i) Notwithstanding any other provision of this article,
10 information identifying any victim or witness, including the name
11 of a victim or witness and including the address, telephone number,
12 driver's license number, social security number, date of birth, or
13 bank account information or any other information that by reference
14 would make it possible to identify a victim or witness, is
15 confidential and may not be disclosed unless the disclosure is
16 ordered by the court under Subsection (h) or otherwise required by
17 Subsection (j).

18 (j) Notwithstanding any other provision of this article,
19 the state shall disclose to the accused or suspected person any
20 exculpatory, impeachment, or mitigating document, item, or
21 information that is in the possession, custody, or control of the
22 state or any person under contract with the state that tends to
23 negate the guilt of the accused or suspected person or would tend to
24 reduce the punishment for the offense being investigated.

25 (k) The state shall electronically record or otherwise
26 document any document, item, or other information provided to the
27 accused or suspected person under this article.

1 (1) A court may order the accused or suspected person to pay
2 costs related to discovery under this article, not to exceed the
3 amounts authorized to be charged by Subchapter F, Chapter 552,
4 Government Code, for providing public information.

5 (m) Except as provided by Subsection (i), this article does
6 not prohibit the attorney representing the state from providing
7 discovery and documentation beyond that required by this article.

8 (n) This article applies only to discovery for a grand jury
9 investigation. This article does not limit an accused or suspected
10 person's right to discovery authorized by other law.

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

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

17 (1) "Your testimony before this grand jury is under
18 oath";

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

22 (3) "You have the right to refuse to make answers to
23 any question, the answer to which would incriminate you in any
24 manner";

25 (4) "During questioning, you [~~"You~~] have the right to
26 have an attorney [~~a lawyer~~] present [~~outside this chamber~~] to
27 advise you before making answers to questions you feel might

1 incriminate you";

2 (5) "Any testimony you give may be used against you at
3 any subsequent proceeding";

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

8 SECTION 9. Article 20.18, Code of Criminal Procedure, is
9 amended to read as follows:

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

14 (b) Before the grand jury may question the witness, a
15 witness appearing before a grand jury shall be orally given the
16 warnings described by Article 20.17(c), other than the warning
17 described by Article 20.17(c)(6).

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

27 SECTION 10. Subtitle A, Title 2, Civil Practice and

1 Remedies Code, is amended by adding Chapter 14A to read as follows:

2 CHAPTER 14A. GRAND JURY LITIGATION

3 Sec. 14A.001. RECOVERY OF ATTORNEY'S FEES AND RELATED
4 EXPENSES; WAIVER OF IMMUNITY. (a) Not later than the 30th day
5 after the date of the grand jury vote under Article 20.19, Code of
6 Criminal Procedure, the accused or suspected person may submit to
7 the court an application to recover attorney's fees and other
8 related expenses. The application must:

9 (1) allege that the position of the attorney
10 representing the state was:

11 (A) not substantially justified; and

12 (B) vexatious, frivolous, or in bad faith; and

13 (2) show the amount of attorney's fees and other
14 related expenses incurred by the accused or suspected person during
15 the grand jury investigation, including an itemized statement
16 submitted by any attorney representing the accused or suspected
17 person or any expert witness testifying on behalf of the accused or
18 suspected person and showing:

19 (A) the time actually expended; and

20 (B) the rate at which the fees and other expenses
21 were calculated.

22 (b) The court may award reasonable attorney's fees and other
23 related expenses to the accused or suspected person if the court:

24 (1) finds that the position of the attorney
25 representing the state was not substantially justified, based on
26 the record made in the grand jury investigation for which
27 attorney's fees and other related expenses are requested;

1 (2) finds that the position of the attorney
2 representing the state was vexatious, frivolous, or in bad faith;
3 and

4 (3) does not find that special circumstances make the
5 award unjust.

6 (c) To determine whether the position of the attorney
7 representing the state was vexatious, frivolous, or in bad faith,
8 the court, for good cause shown, may receive evidence ex parte and
9 in camera, including evidence that reveals or might reveal the
10 identity of an informant or undercover agent or matters occurring
11 before a grand jury. The court shall keep evidence received under
12 this subsection under seal.

13 (d) The attorney representing the state shall pay
14 attorney's fees and other related expenses awarded under this
15 section.

16 (e) Governmental immunity is waived and abolished to the
17 extent of liability for attorney's fees and other related expenses
18 under this section.

19 SECTION 11. Articles 20.02(d) and (e), Code of Criminal
20 Procedure, are repealed.

21 SECTION 12. The changes in law made by this Act apply only
22 to a grand jury proceeding that begins on or after the effective
23 date of this Act. A grand jury proceeding that begins before the
24 effective date of this Act is governed by the law in effect on the
25 date the proceeding began, and the former law is continued in effect
26 for that purpose.

27 SECTION 13. This Act takes effect September 1, 2019.