

By: Whitmire

S.B. No. 1492

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. The heading to Article 20.012, Code of Criminal

1 Procedure, is amended to read as follows:

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

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

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

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

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

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

26 (b) A grand jury may investigate, and may present an
27 indictment with respect to, a person described by Subsection (a)

1 only if the attorney representing the state presents material
2 evidence that was not known to the state before or during the
3 previous grand jury investigation.

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

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

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

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

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

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

24 SECTION 6. Chapter 20, Code of Criminal Procedure, is
25 amended by adding Article 20.035 to read as follows:

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

27 (a) The attorney representing the state shall present to a grand

1 jury investigating an offense any evidence that is:

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

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

4 (3) in the possession, custody, or control of the
5 state or any person under contract with the state.

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

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, you [~~"You]~~ have the right to
23 have an attorney [~~a lawyer]~~ present [~~outside this chamber]~~ to
24 advise you before making answers to questions you feel might
25 incriminate you";

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

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) A person who is
8 subpoenaed to appear as a witness before a grand jury shall be given
9 a reasonable opportunity to retain counsel and to consult with
10 counsel before the person's appearance.

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

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

24 SECTION 9. The changes in law made by this Act apply only to
25 a grand jury proceeding that begins on or after the effective date
26 of this Act. A grand jury proceeding that begins before the
27 effective date of this Act is governed by the law in effect on the

1 date the proceeding began, and the former law is continued in effect
2 for that purpose.

3 SECTION 10. This Act takes effect September 1, 2019.