

By: Thompson of Harris

H.B. No. 179

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. Subchapter A, Chapter 20A, Code of Criminal Procedure, is amended by adding Article 20A.002 to read as follows:

Art. 20A.002. WHO MAY BE INVESTIGATED. (a) Except as provided by Subsection (b), a grand jury may not investigate a person who is accused or suspected of an offense and may not vote 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) A grand jury may investigate, and may 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 2. Article 20A.102(a), Code of Criminal Procedure, is amended to read as follows:

(a) While the grand jury is conducting proceedings, only the following persons may be present in the grand jury room:

- (1) a grand juror;
- (2) a bailiff;
- (3) the attorney representing the state;

1 (4) a witness:

2 (A) while the witness is being examined; or

3 (B) when the witness's presence is necessary to
4 assist the attorney representing the state in examining another
5 witness or presenting evidence to the grand jury;

6 (5) an interpreter, if necessary;

7 (6) a stenographer or a person operating an electronic
8 recording device, as provided by Article 20A.201; ~~and~~

9 (7) a person operating a video teleconferencing system
10 for use under Article 20A.259; and

11 (8) an attorney representing a witness, including a
12 witness who is an accused or suspected person, during the time the
13 witness is being examined or offering testimony to the grand jury
14 and for the sole purpose of providing consultation in the manner
15 described by Article 20A.1031.

16 SECTION 3. Subchapter C, Chapter 20A, Code of Criminal
17 Procedure, is amended by adding Articles 20A.1031 and 20A.105 to
18 read as follows:

19 Art. 20A.1031. ATTORNEY REPRESENTING WITNESS ENTITLED TO
20 APPEAR. A witness who testifies before a grand jury, including a
21 witness who is an accused or suspected person, is entitled to have
22 an attorney present while the grand jury is questioning the
23 witness. The grand jury shall permit the attorney or the witness to
24 interrupt the questioning at any time so that the witness may
25 consult with the attorney outside the hearing of the grand jury.

26 Art. 20A.105. PRESENTATION OF EXCULPATORY EVIDENCE BY
27 STATE. (a) The attorney representing the state shall present to a

1 grand 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 4. The heading to Article 20A.201, Code of Criminal
9 Procedure, is amended to read as follows:

10 Art. 20A.201. RECORDING OF GRAND JURY PROCEEDINGS [~~ACCUSED~~
11 ~~OR SUSPECTED PERSON'S TESTIMONY~~]; RETENTION OF RECORDS.

12 SECTION 5. Articles 20A.201(a) and (b), Code of Criminal
13 Procedure, are amended to read as follows:

14 (a) Except as otherwise provided by this subsection, all
15 statements made by the grand jury or the attorney representing the
16 state and the [The] examination and testimony of a witness [an
17 ~~accused or suspected person before the grand jury and that person's~~
18 ~~testimony] shall be recorded by a stenographer or by use of an
19 electronic device capable of recording sound. Deliberations of the
20 grand jury may not be recorded.~~

21 (b) The validity of a grand jury proceeding is not affected
22 by an unintentional failure to record all or part of the proceedings
23 as required by [examination or testimony under] Subsection (a).

24 SECTION 6. Article 20A.202(b), Code of Criminal Procedure,
25 is amended to read as follows:

26 (b) A subpoena or summons relating to a grand jury
27 proceeding or investigation must be kept secret to the extent and

1 for as long as necessary to prevent the unauthorized disclosure of a
2 matter before the grand jury. This subsection may not be construed
3 to limit a disclosure permitted by Article 20A.204(b), (c), or (d)
4 or 20A.205 [~~20A.205(a) or (b)~~].

5 SECTION 7. Article 20A.204(a), Code of Criminal Procedure,
6 is amended to read as follows:

7 (a) The attorney representing the state may not disclose
8 anything transpiring before the grand jury except as permitted by
9 this article or Article 20A.205 [~~Article 20A.205(a) or (b)~~].

10 SECTION 8. Subchapter E, Chapter 20A, Code of Criminal
11 Procedure, is amended by adding Article 20A.2041 to read as
12 follows:

13 Art. 20A.2041. DISCLOSURE BY ATTORNEY REPRESENTING
14 WITNESS. Except as provided by Article 20A.205, an attorney
15 representing a witness may not disclose anything transpiring before
16 the grand jury. An attorney who discloses information in violation
17 of this article is subject to punishment for contempt in the same
18 manner as a person who violates Article 20A.203(a).

19 SECTION 9. Article 20A.205, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 20A.205. DISCOVERY [~~PETITION FOR DISCLOSURE~~] BY OR ON
22 BEHALF OF ACCUSED OR SUSPECTED PERSON [~~DEFENDANT~~]. (a) Except as
23 otherwise provided by this article, if the state provides notice to
24 an accused or suspected person of the grand jury investigation, as
25 soon as practicable after receiving a request from an accused or
26 suspected person, the attorney representing the state shall produce
27 and permit the inspection and the electronic duplication, copying,

1 and photographing, by or on behalf of the accused or suspected
2 person, of any:

3 (1) offense reports, designated documents, or
4 designated papers arising from the alleged offense;

5 (2) designated written or recorded statements of the
6 accused or suspected person or a witness that arise from the alleged
7 offense, including witness statements of law enforcement officers;
8 and

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

11 (A) are not otherwise privileged;

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

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

16 (b) Subsection (a) does not authorize the removal of
17 documents, items, or information from the possession of the state,
18 and any inspection shall be in the presence of a representative of
19 the state.

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

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

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

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

3 (2) the work product of the state's investigators,
4 including an investigator's notes or reports.

5 (f) The rights granted to the accused or suspected person
6 under Subsection (a) do not extend to written communications
7 between the state and an agent, representative, or employee of the
8 state.

9 (g) If only a portion of the applicable document, item, or
10 information is subject to discovery under this article, the state
11 is not required to produce or permit the inspection of the remaining
12 portion that is not subject to discovery and may withhold or redact
13 that portion. The state shall inform the accused or suspected
14 person that a portion of the document, item, or information has been
15 withheld or redacted.

16 (h) The accused or suspected person, the attorney
17 representing the accused or suspected person, or an investigator,
18 expert, consulting legal counsel, or other agent of the attorney
19 representing the accused or suspected person may not disclose to a
20 third party any documents, evidence, materials, or witness
21 statements received under this article unless:

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

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

27 (i) Notwithstanding any other provision of this article,

1 information identifying any victim or witness, including the name
2 of a victim or witness and including the address, telephone number,
3 driver's license number, social security number, date of birth, or
4 bank account information or any other information that by reference
5 would make it possible to identify a victim or witness, is
6 confidential and may not be disclosed unless the disclosure is
7 ordered by the court under Subsection (h) or otherwise required by
8 Subsection (j).

9 (j) Notwithstanding any other provision of this article,
10 the state shall disclose to the accused or suspected person any
11 exculpatory, impeachment, or mitigating document, item, or
12 information that is in the possession, custody, or control of the
13 state or any person under contract with the state that tends to
14 negate the guilt of the accused or suspected person or would tend to
15 reduce the punishment for the offense being investigated.

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

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

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

26 (n) This article applies only to discovery for a grand jury
27 investigation. This article does not limit an accused or suspected

1 person's right to discovery authorized by other law.

2 ~~(o) [The defendant may petition a court to order the~~
3 ~~disclosure of information made secret by Article 20A.202,~~
4 ~~20A.203(a), or 20A.204, including a recording or typewritten~~
5 ~~transcription under Article 20A.201, as a matter preliminary to or~~
6 ~~in connection with a judicial proceeding. The court may order~~
7 ~~disclosure of the information if the defendant shows a~~
8 ~~particularized need.~~

9 ~~[(b) A petition for disclosure under Subsection (a) must be~~
10 ~~filed in the district court in which the case is pending. The~~
11 ~~defendant must also file a copy of the petition with the attorney~~
12 ~~representing the state, the parties to the judicial proceeding, and~~
13 ~~any other person the court requires. Each person who receives a copy~~
14 ~~of the petition under this subsection is entitled to appear before~~
15 ~~the court. The court shall provide interested parties with an~~
16 ~~opportunity to appear and present arguments for or against the~~
17 ~~requested disclosure.~~

18 ~~[(c)]~~ A person who receives information under this article
19 and discloses that information in a manner not authorized by this
20 article may be punished for contempt in the same manner as a person
21 who violates Article 20A.203(a).

22 SECTION 10. Article 20A.257, Code of Criminal Procedure, is
23 amended to read as follows:

24 Art. 20A.257. EXAMINATION OF WITNESSES. (a) A person who
25 is subpoenaed to appear as a witness before a grand jury shall be
26 given a reasonable opportunity to retain counsel and to consult
27 with counsel before the person's appearance.

1 (b) Only a grand juror or the attorney representing the
2 state may examine a witness before the grand jury.

3 (c) [~~(b)~~] The attorney representing the state shall advise
4 the grand jury regarding the proper mode of examining a witness.

5 (d) Before the grand jury may question the witness, a
6 witness appearing before a grand jury shall be orally given the
7 following warning:

8 "Your testimony before this grand jury is under oath. Any
9 material question that is answered falsely before this grand jury
10 subjects you to being prosecuted for aggravated perjury. You have
11 the right to refuse to make answers to any question, the answer to
12 which would incriminate you in any manner. During questioning, you
13 have the right to have an attorney present to advise you before
14 making answers to questions you feel might incriminate you. Any
15 testimony you give may be used against you at any subsequent
16 proceeding."

17 (e) [~~(c)~~] If a felony has been committed in any county in
18 the grand jury's jurisdiction, and the name of the offender is known
19 or unknown or if it is uncertain when or how the felony was
20 committed, the grand jury shall first state the subject matter
21 under investigation to a witness called before the grand jury and
22 may then ask questions relevant to the transaction in general terms
23 and in a manner that enables a determination as to whether the
24 witness has knowledge of the violation of any particular law by any
25 person, and if so, by what person.

26 SECTION 11. Article [20A.258](#)(b), Code of Criminal Procedure,
27 is amended to read as follows:

1 (b) The warnings required under Subsection (a)(1) must
2 consist of the following:

3 "Your testimony before this grand jury is under oath. Any
4 material question that is answered falsely before this grand jury
5 subjects you to being prosecuted for aggravated perjury. You have
6 the right to refuse to make answers to any question, the answer to
7 which would incriminate you in any manner. During questioning, you
8 ~~[You]~~ have the right to have an attorney ~~[a lawyer]~~ present ~~[outside~~
9 ~~this chamber]~~ to advise you before making answers to questions you
10 feel might incriminate you. Any testimony you give may be used
11 against you at any subsequent proceeding. If you are unable to
12 employ an attorney ~~[a lawyer]~~, you have the right to have an
13 attorney ~~[a lawyer]~~ appointed to advise you before making an answer
14 to a question, the answer to which you feel might incriminate you."

15 SECTION 12. Subtitle A, Title 2, Civil Practice and
16 Remedies Code, is amended by adding Chapter 14A to read as follows:

17 CHAPTER 14A. GRAND JURY LITIGATION

18 Sec. 14A.001. RECOVERY OF ATTORNEY'S FEES AND RELATED
19 EXPENSES; WAIVER OF IMMUNITY. (a) Not later than the 30th day
20 after the date of the grand jury vote under Article 20A.301, Code of
21 Criminal Procedure, the accused or suspected person may submit to
22 the court an application to recover attorney's fees and other
23 related expenses. The application must:

24 (1) allege that the position of the attorney
25 representing the state was:

26 (A) not substantially justified; and

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

1 (2) show the amount of attorney's fees and other
2 related expenses incurred by the accused or suspected person during
3 the grand jury investigation, including an itemized statement
4 submitted by any attorney representing the accused or suspected
5 person or any expert witness testifying on behalf of the accused or
6 suspected person and showing:

7 (A) the time actually expended; and

8 (B) the rate at which the fees and other expenses
9 were calculated.

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

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

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

19 (3) does not find that special circumstances make the
20 award unjust.

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

1 (d) The attorney representing the state shall pay
2 attorney's fees and other related expenses awarded under this
3 section.

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

7 SECTION 13. The changes in law made by this Act apply only
8 to a grand jury proceeding that begins on or after the effective
9 date of this Act. A grand jury proceeding that begins before the
10 effective date of this Act is governed by the law in effect on the
11 date the proceeding began, and the former law is continued in effect
12 for that purpose.

13 SECTION 14. This Act takes effect September 1, 2021.