

BILL ANALYSIS

H.B. 3362
By: Little
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill author has informed the committee that there are dozens of cases in Texas which have highlighted the need for increased transparency and reform in the way grand juries perform their duties with regard to high-profile elected officials. The bill author further informed the committee that district attorneys in Texas have broad discretion, which can result in repeated attempts to indict, heavy-handed presentations to easily swayed untrained grand jurors, and damage the accused's reputation and prospects. H.B. 3362 seeks to reform this process by providing the accused with greater access to grand jury proceedings and prosecutor records.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3362 amends the Code of Criminal Procedure to revise provisions relating to the recording and disclosure of grand jury proceedings.

Discovery by or on Behalf of an Accused or Suspected Person

H.B. 3362 replaces certain statutory provisions relating to a petition for disclosure by a defendant with provisions relating to discovery by or on behalf of an accused or suspected person. However, the bill retains and revises the provision applicable to the punishment for contempt of a person who receives information under those replaced provisions and discloses it to make it applicable instead to such disclosure in a manner not authorized under the bill's provisions, as later described, relating to discovery by or on behalf of an accused or suspected person. Accordingly, the bill removes the following provisions in current law:

- the authorization for a defendant to petition a court to order the disclosure of information made secret under state law relating to grand juries, including a recording or typewritten transcription of an accused or suspected person's testimony before the grand jury, as a matter preliminary to or in connection with a judicial proceeding;
- the authorization for the court to order the disclosure of that information if the defendant shows a particularized need;
- the manner in which such a petition must be filed;
- the entitlement each person has who receives a copy of the petition to appear before the court; and

- the requirement for the court to provide interested parties with an opportunity to appear and present arguments for or against the requested disclosure.

In replacing those removed provisions, the bill requires the state's attorney, if the state provides notice to an accused or suspected person of a grand jury investigation, as soon as practicable after receiving a request from the accused or suspected person, to produce and permit the inspection and the electronic duplication, copying, and photographing, by or on behalf of the accused or suspected person, of any of the following:

- offense reports, designated documents, or designated papers arising from the alleged offense;
- designated written or recorded statements of the accused or suspected person or a witness that arise from the alleged offense, including witness statements of law enforcement officers; and
- designated books, accounts, letters, photographs, or objects or other tangible things that are not otherwise privileged, constitute or contain evidence material to any matter involved in the grand jury investigation, and are in the possession, custody, or control of the state or any person under contract with the state.

Any inspection must be in the presence of a representative of the state. That requirement expressly does not authorize the removal of documents, items, or information from the possession of the state or the disclosure of the work product of the applicable state's attorney or the work product of the state's investigators, including an investigator's notes or reports.

H.B. 3362 requires the state, in the case of a pro se accused or suspected person, to permit the inspection or review of applicable documents, items, or information but establishes that the state is not required to allow electronic duplication of the documents, items, or information. The bill authorizes the state's attorney to provide to an accused or suspected person electronic duplicates of any applicable documents, items, or information. The rights granted to the accused or suspected person under these provisions do not extend to written communications between the state and an agent, representative, or employee of the state.

H.B. 3362 establishes that, if only a portion of the applicable document, item, or information is subject to discovery, the state is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and may withhold or redact that portion. The bill requires the state to inform the accused or suspected person that a portion of the document, item, or information has been withheld or redacted. The bill authorizes the accused or suspected person, the attorney representing the accused or suspected person, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the accused or suspected person to disclose to a third party any documents, evidence, materials, or witness statements received under the following circumstances:

- a court orders the disclosure after a notice and hearing, on a showing of good cause and after considering the security and privacy interests of any victim or witness; or
- the documents, evidence, materials, or witness statements having already been publicly disclosed.

H.B. 3362 establishes that information identifying any victim or witness, including the name of a victim or witness and including the address, telephone number, driver's license number, social security number, date of birth, or bank account information or any other information that by reference would make it possible to identify a victim or witness, is confidential. The bill restricts the authority to disclose such information on a court's order or otherwise required by the subsequent bill provision. The bill requires the state to disclose to the accused or suspected person any exculpatory, impeachment, or mitigating document, item, or information that is in the possession, custody, or control of the state or any person under contract with the state that tends to negate the guilt of the accused or suspected person or would tend to reduce the punishment for the offense being investigated.

H.B. 3362 requires the state to electronically record or otherwise document any document, item, or other information provided to the accused or suspected person. Except as otherwise provided

by the bill with respect to prohibited disclosure of certain identifying information, these bill provisions expressly do not prohibit the state's attorney from providing discovery and documentation beyond that required by these provisions. These bill provisions apply only to discovery for a grand jury investigation and expressly do not limit an accused or suspected person's right to discovery authorized by other law.

Recording of Grand Jury Proceedings; Retention of Records

H.B. 3362 revises statutory provisions relating to the recording of an accused or suspected person's testimony by doing the following:

- replacing the requirement for the examination of an accused or suspected person before the grand jury and that person's testimony to be recorded by a stenographer or by use of an electronic device capable of recording sound with the requirement for all statements made by the grand jury or the state's attorney and the examination and testimony of a witness to be recorded in that manner;
- prohibiting deliberations of the grand jury from being recorded; and
- clarifying that the validity of a grand jury proceeding is not affected by an unintentional failure to record all or part of the proceedings.

Procedural Provision

H.B. 3362 applies only to a grand jury proceeding that begins on or after the bill's effective date. A grand jury proceeding that begins before the bill's effective date is governed by the law in effect on the date the proceeding began, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2025.