

BILL ANALYSIS

H.B. 3664
By: Smithee
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill author has informed the committee that over the past decade, Texas has seen numerous examples of innocent individuals who were indicted in secret grand jury proceedings without the benefit of due process or discovery. H.B. 3664 seeks to protect the rights of individuals under investigation by reforming the grand jury process and providing the accused with greater access to 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 rulemaking authority is expressly granted to the Office of Court Administration of the Texas Judicial System in SECTION 10 of this bill.

ANALYSIS

Training for Prospective Grand Jurors

H.B. 3664 amends the Government Code to require a prospective grand juror, before the prospective grand juror may be accepted and impaneled under Code of Criminal Procedure provisions governing grand jury organization, to complete a training course regarding grand jury proceedings that is administered by the Office of Court Administration of the Texas Judicial System (OCA). The training course may be offered online and must include instruction regarding the following:

- the purpose and rules of grand jury service;
- the grand juror selection process; and
- grand jury procedures and deliberations.

The bill requires OCA, as soon as practicable after the bill's effective date, to adopt rules as necessary to implement these provisions, including rules regarding the content of the training course.

H.B. 3664 amends the Code of Criminal Procedure to require each person who is presented to serve as a grand juror to complete the training regarding grand jury proceedings described by the bill's provisions before a prospective grand juror may be accepted and impaneled.

Investigation by a Grand Jury

H.B. 3664 prohibits a grand jury 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 and that grand jury found no bill of

indictment. However, the grand jury is authorized to investigate, and present an indictment with respect to, such a person only if the state's attorney presents material evidence that was not known to the state before or during the previous grand jury investigation.

Recording and Disclosure of Grand Jury Proceedings

H.B. 3664 removes as a requirement for the examination of an accused or suspected person before the grand jury that the person's testimony be recorded by a stenographer or by use of an electronic device capable of recording sound and does the following instead:

- requires all statements made by the grand jury or the state's attorney and the examination and testimony of a witness to be recorded by those means;
- prohibits deliberations of the grand jury from being recorded; and
- accordingly makes the provision establishing that the validity of a grand jury proceeding is not affected by an unintentional failure to record all or part of the examination or testimony under the removed requirement applicable with respect to the proceedings as required by these provisions.

H.B. 3664 removes the provisions that authorize the defendant to petition a court to order the disclosure of information made secret by statutory provisions relating to the secrecy of grand jury proceedings, to the prohibition on disclosure by person in a proceeding, or to disclosure by the state's attorney, including a recording or typewritten transcription of an accused or suspected person's testimony under current statute, as a matter preliminary to or in connection with a judicial proceeding; provisions that authorize the court to order disclosure of the information if the defendant shows a particularized need; and related requirements and entitlements for the defendant, the court, and interested parties in regard to the petition. The bill instead provides for the following:

- except as otherwise provided by the bill's provisions, if the state provides notice to an accused or suspected person of the grand jury investigation, as soon as practicable after receiving a request from an accused or suspected person, the state's attorney must 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 information:
 - 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, as follows:
 - 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;
- these provisions expressly do not authorize the removal of documents, items, or information from the possession of the state, and any inspection must be in the presence of a state's representative;
- the state is required, in the case of a pro se accused or suspected person, to permit the inspection or review of the document, item, or information as provided by these provisions, but is not required to allow electronic duplication;
- the state's attorney is authorized to provide to an accused or suspected person electronic duplicates of any document, item, or information described by these provisions;
- these provisions expressly do not authorize the disclosure of the following:
 - the work product of the state's attorney in the investigation; or
 - the work product of the state's investigators, including an investigator's notes or reports;

- the rights granted to the accused or suspected person under these provisions do not extend to written communications between the state and an agent, state's representative, or employee;
- if only a portion of the applicable document, item, or information is subject to discovery under these provisions, 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 state is required to inform the accused or suspected person that a portion of the document, item, or information has been withheld or redacted;
- 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 is prohibited from disclosing to a third party any documents, evidence, materials, or witness statements received under these provisions unless:
 - a court orders the disclosure after 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 have already been publicly disclosed;
- 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 and may not be disclosed unless the disclosure is ordered by the court under or otherwise required by these provisions;
- the state is required 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;
- the state is required to electronically record or otherwise document any document, item, or other information provided to the accused or suspected person under these provisions;
- except as provided by these provisions relating to the confidentiality of certain identifying information, these provisions do not prohibit the state's attorney from providing discovery and documentation beyond that required by these provisions; and
- these provisions apply only to discovery for a grand jury investigation and do not limit an accused or suspected person's right to discovery authorized by other law.

Additionally, the bill revises the authorization for a person who receives information under these provisions and discloses that information to be punished for contempt in the same manner as an applicable person who violates statutory provisions relating to prohibited disclosure by a person in a proceeding by clarifying that the authorization applies to such a disclosure in a manner not authorized by these provisions.

Examination of Witnesses and Accused or Suspected Persons

H.B. 3664 requires a person who is subpoenaed to appear as a witness before a grand jury to be given a reasonable opportunity to retain counsel and to consult with counsel before the person's appearance. The bill also requires a witness appearing before a grand jury to be orally given the following warning before the grand jury may question the witness:

"Your testimony before this grand jury is under oath. Any material question that is answered falsely before this grand jury subjects you to being prosecuted for aggravated perjury. You have the right to refuse to make answers to any question, the answer to which would incriminate you in any manner. Any testimony you give may be used against you at any subsequent proceeding."

H.B. 3664 revises the content of the warnings that an accused or suspected person who is subpoenaed to appear before the grand jury must be provided orally and in writing before the person's examination by replacing references to "a lawyer" with "an attorney."

Transition

H.B. 3664 establishes that the bill 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.