

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 2150  
By: Alvarado et al. (Whitmire)  
Criminal Justice  
5/20/2015  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of the grand jury system is to determine the validity of the cause used in the arrest of a person. The grand jury system has recently come under scrutiny because concern has been raised about how effective the system is in removing bias from a grand jury pool.

H. B. 2150 amends the Code of Criminal Procedure to expand the causes for which an oral challenge to a particular grand juror may be made and sets out those additional causes. The bill requires a juror, if the juror determines that the juror could be subject to a valid challenge for cause during the course of the juror's service on the grand jury, to recuse himself or herself from grand jury service until the cause no longer exists. The bill establishes that a person who knowingly fails to recuse himself or herself may be held in contempt of court. The bill requires a person authorized to be present in the grand jury room to report a known violation of this requirement to the court. The bill requires the court to instruct the grand jury as to this duty.

H. B. 2150 increases from two to four the maximum number of alternate jurors that the court is required to qualify and impanel to serve on a grand jury on the disqualification or unavailability of a juror during the term of the grand jury. The bill establishes as an additional cause of unavailability that a juror is unable to participate fully in the duties of the grand jury because the juror is unwilling to serve on the grand jury or is otherwise neglecting the juror's duty to serve. As amended the grand jury commissioners system of organizing a grand jury known as the Key Man or Pick a Pal method is abolished, leaving only the random selection method in law. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 2150 amends current law relating to the organization of a grand jury.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 19.01, Code of Criminal Procedure, as follows:

Art. 19.01. New heading: SELECTION AND SUMMONS OF PROSPECTIVE GRAND JURORS. Requires the district judge to direct that 20 to 125 prospective grand jurors be selected and summoned, with return on summons, in the same manner as for the selection and summons of panels for the trial of civil cases in the district courts. Requires the judge to try the qualifications for and excuses from service as a grand juror and impanel the completed grand jury as provided by this chapter.

Deletes existing text requiring the district judge, at or during any term of court, to appoint not less than three, nor more than five persons to perform the duties of jury commissioners, and to cause the sheriff to notify them of their appointment, and when and where they are to appear. Deletes existing text requiring the district judge, in the order appointing such commissioners, to designate whether such commissioners to serve during the term at which selected or for the next succeeding term. Deletes existing text

requiring such commissioners to receive as compensation for each day or part thereof they may serve the sum of Ten Dollars, and to possess certain qualifications.

Deletes existing text authorizing the district judge, in lieu of the selection of prospective jurors by means of a jury commission, to direct that 20 to 125 prospective grand jurors be selected and summoned, with return on summons, in the same manner as for the selection and summons of panels for the trial of civil cases in the district courts. Deletes existing text requiring the judge to try the qualifications for and excuses from service as a grand juror and impanel the completed grand jury in the same manner as provided for grand jurors selected by a jury commission.

SECTION 2. Amends Article 19.07, Code of Criminal Procedure, to delete existing text providing that the extension of the term of a grand jury under this article does not affect the provisions of Article 19.06 (Shall Select Grand Jurors) relating to the selection and summoning of grand jurors for each regularly scheduled term. Makes no further change.

SECTION 3. Amends Article 19.08, Code of Criminal Procedure, to change a reference to grand juror or jury commissioner to grand juror and make a nonsubstantive change.

SECTION 4. Amends Article 19.19, Code of Criminal Procedure, to require the jurors provided for in Article 19.18 (If Less Than Fourteen Attend), rather than in the two preceding Articles, to be summoned in person to attend before the court forthwith.

SECTION 5. Amends Article 19.20, Code of Criminal Procedure, to require the court, on directing the sheriff to summon grand jurors, rather than summon grand jurors not selected by the jury commissioners, to instruct the sheriff that the sheriff must not summon any person to serve as a grand juror who does not possess the qualifications prescribed by law, and to make nonsubstantive changes.

SECTION 6. Amends Article 19.23, Code of Criminal Procedure, to change a reference to theft to misdemeanor theft, and to make nonsubstantive changes.

SECTION 7. Amends Article 19.26, Code of Criminal Procedure, as follows:

Art. 19.26. JURY IMPANELED. (a) Requires the court, when at least fourteen qualified jurors are found to be present, to select twelve fair and impartial persons to serve as grand jurors and two additional persons to serve as alternate grand jurors. Requires the court, in selecting the grand jurors and the alternate grand jurors, to consider the county's demographics related to race, ethnicity, sex, and age.

(b) Requires the court to proceed to impanel the grand jury, unless a challenge is made, which may be to the array or to any particular person presented to serve as a grand juror or an alternate. Requires the court, in addition, to impanel two, rather than to qualify and impanel not more than two, alternates to serve on disqualification or unavailability of a juror during the term of the grand jury. Provides that, for purposes of this subsection, a juror is unavailable if the juror is unable to participate fully in the duties of the grand jury because of the death of the juror, a physical or mental illness of the juror, or any other reason the court determines constitutes good cause for dismissing the juror.

Deletes existing text providing that the grand jury is composed of not more than twelve qualified jurors.

SECTION 8. Amends Article 19.30, Code of Criminal Procedure, as follows:

Art. 19.30. CHALLENGE TO "ARRAY". Requires that a challenge to the "array" be made in writing for these causes only:

1. That those summoned as grand jurors are not in fact those selected by the method provided by Article 19.01, rather than Article 19.01(b) of this chapter or by the jury commissioners; and

2. That the officer who summoned the grand jurors acted corruptly in summoning any one or more of them, rather than in case of grand jurors summoned by order of the court, that the officer who summoned them had acted corruptly in summoning any one or more of them.

SECTION 9. Amends Article 19.31, Code of Criminal Procedure, as follows:

Art. 19.31. CHALLENGE TO JUROR. (a) Creates this subsection from existing text. Authorizes a challenge to a particular grand juror to be made orally for any of the following causes:

1. That the juror is insane;
2. That the juror has such defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render the juror unfit for jury service, or that the juror is legally blind and the court in its discretion is not satisfied that the juror is fit for jury service in that particular case;
3. That the juror is a witness in or a target of an investigation by a grand jury;
4. That the juror served on a petit jury in a former trial of the same alleged conduct or offense that the grand jury is investigating;
5. That the juror has a bias or prejudice in favor of or against the person accused or suspected of committing an offense that the grand jury is investigating;
6. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the person accused or suspected of committing an offense that the grand jury is investigating as would influence the juror's vote on the presentment of an indictment;
7. That the juror is related within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person accused or suspected of committing an offense that the grand jury is investigating or to a person who is a victim of an offense that the grand jury is investigating;
8. That the juror has a bias or prejudice against any phase of the law upon which the state is entitled to rely for an indictment;
9. That the juror is not a qualified juror; and
10. That the juror is the prosecutor upon an accusation against the person making the challenge.

Makes nonsubstantive changes.

(b) Authorizes a challenge under Subdivision (a)(3) to be made ex parte. Requires that the challenge be reviewed and ruled on in an in camera proceeding. Requires the court to seal any record of the challenge.

(c) Defines "legally blind" in this article.

SECTION 10. Amends Section 24.014(b), Government Code, to authorize the judge to impanel, rather than appoint jury commissioners who select and draw, grand and petit jurors as provided by law. Makes no further change.

SECTION 11. Amends Section 24.135(c), Government Code, to authorize the judge of the 33rd District Court to impanel grand juries in each county, rather than select jury commissioners and impanel grand juries in each county. Makes no further change.

SECTION 12. Amends Section 24.377(b), Government Code, to authorize the judge of the 198th District Court to impanel grand juries in each county, rather than select jury commissioners and impanel grand juries in each county. Makes no further change.

SECTION 13. Amends Section 24.396(b), Government Code, to authorize the judge of the 218th District Court to impanel grand juries, rather than select grand jury commissioners and impanel grand juries, in each county in the district but is not required to impanel a grand jury in any county except when the judge considers it necessary. Makes no further change.

SECTION 14. Amends Section 24.487(b), Government Code, to authorize the judge of the 341st District Court to impanel grand juries in Webb County, rather than select jury commissioners and impanel grand juries in Webb County. Makes no further change.

SECTION 15. Amends Section 24.568(d), Government Code, to authorize the judge of the 424th District Court to impanel grand juries in each county, rather than select jury commissioners and impanel grand juries in each county. Makes no further change.

SECTION 16. Amends Section 24.596(b), Government Code, to authorize the judge of the 452nd District Court to impanel grand juries in each county, rather than select jury commissioners and impanel grand juries in each county. Makes no further change.

SECTION 17. Amends the heading to Section 402.024, Government Code, to read as follows:

Sec. 402.024. DEFENSE OF DISTRICT ATTORNEY OR GRAND JUROR.

SECTION 18. Amends Section 402.024(b), Government Code, to change references to grand jury commissioner or grand juror to grand juror.

SECTION 19. Provides that the following provisions are repealed:

Repealer: Article 19.02 (Notified of Appointment), Code of Criminal Procedure;

Repealer: Article 19.03 (Oath of Commissioners), Code of Criminal Procedure;

Repealer: Article 19.04 (Instructed), Code of Criminal Procedure;

Repealer: Article 19.05 (Kept Free from Intrusion), Code of Criminal Procedure;

Repealer: Article 19.06 (Shall Select Grand Jurors), Code of Criminal Procedure;

Repealer: Article 19.09 (Names Returned), Code of Criminal Procedure;

Repealer: Article 19.10 (List to Clerk), Code of Criminal Procedure;

Repealer: Article 19.11 (Oath to Clerk), Code of Criminal Procedure;

Repealer: Article 19.12 (Deputy Clerk Sworn), Code of Criminal Procedure;

Repealer: Article 19.13 (Clerk Shall Open Lists), Code of Criminal Procedure;

Repealer: Article 19.14 (Summoning), Code of Criminal Procedure;

Repealer: Article 19.15 (Return of Officer), Code of Criminal Procedure;

Repealer: Article 19.17 (Failure to Select), Code of Criminal Procedure; and

Repealer: Section 24.014(c) (authorizing the judge to determine whether or not to draw or empanel a grand jury), Government Code.

SECTION 20. Provides that Section 402.024(b), Government Code, as amended by this Act, applies only to a court action arising from an act of a person that occurs on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 21. Effective date: September 1, 2015.