

By: Dutton

H.B. No. 2617

A BILL TO BE ENTITLED

AN ACT

relating to reorganizing the grand jury as the probable cause jury.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 19, Code of Criminal Procedure, is amended to read as follows:

CHAPTER 19. ORGANIZATION OF THE PROBABLE CAUSE [~~GRAND~~] JURY

SECTION 2. Chapter 19, Code of Criminal Procedure, is amended by adding Articles 19.001, 19.002, 19.003, and 19.004 to read as follows:

Art. 19.001. ORGANIZATION OF PROBABLE CAUSE JURY. (a) The probable cause jury is composed of a three-person panel in each county that serves as the probable cause jury for that county.

(b) The probable cause jurors shall be appointed as follows:

(1) one probable cause juror appointed by the presiding officer of the governing body of the municipality with the largest population in the county, with the approval of the governing body of the municipality;

(2) one probable cause juror appointed by the county judge, with the approval of the commissioners court; and

(3) one probable cause juror appointed by the probable cause jurors appointed under Subdivisions (1) and (2).

(c) The probable cause juror that is appointed under Subsection (b)(3) shall serve as the foreman.

(d) A reference in this code or other law to a grand jury

1 means a probable cause jury established under this article. A
2 reference in this code or other law to a grand juror means a member
3 of the probable cause jury established under this article.

4 Art. 19.002. QUALIFICATIONS. A person appointed to serve
5 as a probable cause juror under Article 19.001:

6 (1) must be a licensed attorney;

7 (2) must have practiced law for at least 10 years;

8 (3) may not have been employed by a district attorney's
9 office during the two-year period preceding the appointment; and

10 (4) may not engage in the private practice of law
11 during the person's tenure on the probable cause jury.

12 Art. 19.003. TERMS. (a) A probable cause juror appointed
13 under Article 19.001(b)(1) serves a term of five years.

14 (b) A probable cause juror appointed under Article
15 19.001(b)(2) serves a term of seven years.

16 (c) A probable cause juror appointed under Article
17 19.001(b)(3) serves a term of 10 years.

18 (d) A probable cause juror appointed under Article 19.001
19 may be reappointed for a second or subsequent term.

20 Art. 19.004. COMPENSATION. (a) A probable cause juror
21 appointed under Article 19.001(b)(1) or (2) is entitled to an
22 annual salary of \$150,000, to be paid by the state.

23 (b) A probable cause juror appointed under Article
24 19.001(b)(3) is entitled to an annual salary of \$200,000, to be paid
25 by the state.

26 SECTION 3. Article 19.34, Code of Criminal Procedure, is
27 amended to read as follows:

1 Art. 19.34. OATH OF PROBABLE CAUSE [~~GRAND~~] JURORS. When a
2 probable cause juror is appointed under this chapter, [~~the grand~~
3 ~~jury is completed, the court shall appoint one of the number~~
4 ~~foreman, and~~] the following oath shall be administered by the
5 court, or under its direction, to the juror [~~jurors~~]: "You solemnly
6 swear that you will diligently inquire into, and true presentment
7 make, of all such matters and things as shall be given you in
8 charge; the State's counsel, your fellows and your own, you shall
9 keep secret, unless required to disclose the same in the course of a
10 judicial proceeding in which the truth or falsity of evidence given
11 in the probable cause [~~grand~~] jury room, in a criminal case, shall
12 be under investigation. You shall present no person from envy,
13 hatred or malice; neither shall you leave any person unrepresented
14 for love, fear, favor, affection or hope of reward; but you shall
15 present things truly as they come to your knowledge, according to
16 the best of your understanding, so help you God".

17 SECTION 4. Article 19.40, Code of Criminal Procedure, is
18 amended to read as follows:

19 Art. 19.40. QUORUM. Two [~~Nine~~] members shall be a quorum
20 for the purpose of discharging any duty or exercising any right
21 properly belonging to the probable cause [~~grand~~] jury.

22 SECTION 5. Article 20.19, Code of Criminal Procedure, is
23 amended to read as follows:

24 Art. 20.19. PROBABLE CAUSE [~~GRAND~~] JURY SHALL VOTE. After
25 all the testimony which is accessible to the probable cause [~~grand~~]
26 jury shall have been given in respect to any criminal accusation,
27 the vote shall be taken as to the presentment of an indictment, and

1 if two [~~nine~~] members concur in finding the bill, the foreman shall
2 make a memorandum of the same with such data as will enable the
3 attorney who represents the State to write the indictment.

4 SECTION 6. Article 20.21, Code of Criminal Procedure, is
5 amended to read as follows:

6 Art. 20.21. INDICTMENT PRESENTED. When the indictment is
7 ready to be presented, the probable cause [~~grand~~] jury shall
8 through their foreman, deliver the indictment to the judge or clerk
9 of the court. At least two [~~nine~~] members of the probable cause
10 [~~grand~~] jury must be present on such occasion.

11 SECTION 7. Article 27.03, Code of Criminal Procedure, is
12 amended to read as follows:

13 Art. 27.03. MOTION TO SET ASIDE INDICTMENT. In addition to
14 any other grounds authorized by law, a motion to set aside an
15 indictment or information may be based on the following:

16 1. That it appears by the records of the court that the
17 indictment was not found by at least two probable cause [~~nine grand~~]
18 jurors, or that the information was not based upon a valid
19 complaint; or

20 2. That some person not authorized by law was present when
21 the probable cause [~~grand~~] jury was deliberating upon the
22 accusation against the defendant, or was voting upon the same [~~, and~~

23 [~~3. That the grand jury was illegally impaneled, provided,~~
24 ~~however, in order to raise such question on motion to set aside the~~
25 ~~indictment, the defendant must show that he did not have an~~
26 ~~opportunity to challenge the array at the time the grand jury was~~
27 ~~impaneled].~~

1 SECTION 8. Article 27.09, Code of Criminal Procedure, is
2 amended to read as follows:

3 Art. 27.09. EXCEPTION TO FORM OF INDICTMENT. Exceptions to
4 the form of an indictment or information may be taken for the
5 following causes only:

6 1. That it does not appear to have been presented in the
7 proper court as required by law; or

8 2. The want of any requisite prescribed by Articles 21.02 and
9 21.21.

10 [~~3. That it was not returned by a lawfully chosen or~~
11 ~~empaneled grand jury.~~]

12 SECTION 9. Section 53.045(b), Family Code, is amended to
13 read as follows:

14 (b) A probable cause [~~grand~~] jury may approve a petition
15 submitted to it under this section by a vote of two [~~nine~~] members
16 of the probable cause [~~grand~~] jury in the same manner that the
17 probable cause [~~grand~~] jury votes on the presentment of an
18 indictment.

19 SECTION 10. Section 24.014(b), Government Code, is amended
20 to read as follows:

21 (b) The judge may appoint jury commissioners who select and
22 draw [~~grand and~~] petit jurors as provided by law. The jurors may be
23 summoned to appear before the court at the time designated by the
24 judge.

25 SECTION 11. Section 24.135(c), Government Code, is amended
26 to read as follows:

27 (c) The judge of the 33rd District Court may [~~select jury~~

1 ~~commissioners and impanel grand juries in each county. The judge~~
2 ~~of the 33rd District Court may alternate the drawing of grand juries~~
3 ~~with the judge of any other district court in each county within the~~
4 ~~33rd Judicial District and may] order [grand and] petit juries to be~~
5 drawn for any term of the court as the judge determines is
6 necessary, by an order entered in the minutes of the court.
7 Indictments within each county may be returned to either court
8 within that county.

9 SECTION 12. Section 24.213(e), Government Code, is amended
10 to read as follows:

11 (e) A criminal complaint may be presented to the probable
12 cause [grand] jury [~~of any district court~~] in Webb County, and a
13 resulting indictment may be returned to any [~~other~~] district court
14 in Webb County with the appropriate criminal jurisdiction.

15 SECTION 13. Section 24.377(b), Government Code, is amended
16 to read as follows:

17 (b) The judge of the 198th District Court may [~~select jury~~
18 ~~commissioners and impanel grand juries in each county. The judge of~~
19 ~~the 198th District Court may alternate the drawing of grand juries~~
20 ~~with the judge of any other district court in each county within the~~
21 ~~judge's district and may] order [grand and] petit juries to be drawn
22 for any term of the judge's court as in the judge's judgment is
23 necessary, by an order entered in the minutes of the court.
24 Indictments within each county may be returned to either court
25 within that county.~~

26 SECTION 14. Section 24.396(b), Government Code, is amended
27 to read as follows:

1 (b) [~~The judge of the 218th District Court may select grand~~
2 ~~jury commissioners and impanel grand juries in each county in the~~
3 ~~district but is not required to impanel a grand jury in any county~~
4 ~~except when he considers it necessary. The judge may alternate the~~
5 ~~impaneling of grand juries in each county with the judge of any~~
6 ~~other district court in that county, or the judges may by agreement~~
7 ~~determine which one of the courts will impanel the grand juries.]~~

8 Indictments within each county may be returned to any district
9 court within that county. All [~~grand and~~] petit juries drawn for
10 one district court in each county are interchangeable with any
11 other district court in that county as if the jury had been drawn
12 for the court in which it is used.

13 SECTION 15. Sections 24.487(b) and (d), Government Code,
14 are amended to read as follows:

15 (b) [~~The judge of the 341st District Court may select jury~~
16 ~~commissioners and impanel grand juries in Webb County. The judge~~
17 ~~of the 341st District Court may alternate the drawing of grand~~
18 ~~juries with the judge of any other district court in the~~
19 ~~county.] By order entered on the minutes, for any term that the
20 judge considers it necessary, the judge of the 341st District Court
21 may order [~~grand and~~] petit juries to be drawn.~~

22 (d) A criminal complaint may be presented to the probable
23 cause [~~grand~~] jury [~~of any district court~~] in Webb County, and a
24 resulting indictment may be returned to any [~~other~~] district court
25 in Webb County with the appropriate criminal jurisdiction.

26 SECTION 16. Section 24.551(f), Government Code, is amended
27 to read as follows:

1 (f) A criminal complaint may be presented to the probable
2 cause [~~grand~~] jury [~~of any district court~~] in Webb County, and a
3 resulting indictment may be returned to any [~~other~~] district court
4 in Webb County with the appropriate criminal jurisdiction.

5 SECTION 17. Section 24.568(d), Government Code, is amended
6 to read as follows:

7 (d) The judge of the 424th District Court may [~~select jury~~
8 ~~commissioners and impanel grand juries in each county. The judge~~
9 ~~of the 424th District Court may alternate the drawing of grand~~
10 ~~juries with the judge of any other district court in each county~~
11 ~~within the 424th Judicial District and may~~] order [~~grand and~~] petit
12 juries to be drawn for any term of the court as the judge determines
13 is necessary, by an order entered in the minutes of the
14 court. Indictments within each county may be returned to either
15 court within that county.

16 SECTION 18. Section 53.072, Government Code, is amended to
17 read as follows:

18 Sec. 53.072. PROBABLE CAUSE [~~GRAND~~] JURY BAILIFFS IN
19 GALVESTON COUNTY. The judge of a district court in Galveston County
20 [~~impaneling a grand jury~~] shall appoint not more than six probable
21 cause [~~grand~~] jury bailiffs.

22 SECTION 19. Section 54.976(d), Government Code, is amended
23 to read as follows:

24 (d) A judge may refer to a magistrate proceedings involving
25 a probable cause [~~grand~~] jury, including issuance of probable cause
26 [~~grand~~] jury subpoenas, receipt of probable cause [~~grand~~] jury
27 reports on behalf of a district judge, the granting of a probable

1 cause [~~grand~~] jury request to recess, and motions to compel
2 testimony [~~, and discharge of a grand jury at the end of a term. A~~
3 ~~magistrate may not impanel a grand jury~~].

4 SECTION 20. The heading to Section 402.024, Government
5 Code, is amended to read as follows:

6 Sec. 402.024. DEFENSE OF DISTRICT ATTORNEY [~~, GRAND JURY~~
7 ~~COMMISSIONER,~~] OR PROBABLE CAUSE [~~GRAND~~] JUROR.

8 SECTION 21. Section 402.024(b), Government Code, is amended
9 to read as follows:

10 (b) The attorney general shall defend a state probable cause
11 [~~grand jury commissioner or grand~~] juror who is a defendant in an
12 action in any court if:

13 (1) the suit involves an act of the person while in the
14 performance of duties as a probable cause [~~grand jury commissioner~~
15 ~~or grand~~] juror; and

16 (2) the person requests the attorney general's
17 assistance in the defense.

18 SECTION 22. The following provisions are repealed:

19 (1) Articles 19.01, 19.02, 19.03, 19.04, 19.05, 19.06,
20 19.07, 19.08, 19.09, 19.10, 19.11, 19.12, 19.13, 19.14, 19.15,
21 19.16, 19.17, 19.18, 19.19, 19.20, 19.21, 19.22, 19.23, 19.24,
22 19.25, 19.26, 19.27, 19.28, 19.29, 19.30, 19.31, 19.32, 19.33,
23 19.35, 19.39, 19.41, and 19.42, Code of Criminal Procedure;

24 (2) Sections 24.014(c), 24.129(d), 24.136(d),
25 24.161(c), 24.164(d), 24.191(c), and 24.193(d), Government Code;
26 and

27 (3) Section 152.015(b), Local Government Code.

1 SECTION 23. (a) The appointments required by Article
2 19.001, Code of Criminal Procedure, as added by this Act, must be
3 made on or before January 1, 2016, to terms beginning January 1,
4 2016.

5 (b) The term of a grand jury that is impaneled before the
6 effective date of this Act and whose term has not yet expired:

7 (1) expires on January 1, 2016, if the grand jury's
8 term is set to expire after January 1, 2016; and

9 (2) is extended to January 1, 2016, if the grand jury's
10 term is set to expire before January 1, 2016.

11 (c) Except as provided by Subsections (b) and (d), the
12 changes in law made by this Act apply to a probable cause jury
13 appointed on or after the effective date of this Act. A grand jury
14 impaneled before the effective date of this Act is governed by the
15 law in effect on the date the grand jury was impaneled, and the
16 former law is continued in effect for that purpose.

17 (d) Section 402.024(b), Government Code, as amended by this
18 Act, applies only to a court action arising from an act of a person
19 that occurs on or after the effective date of this Act. A court
20 action arising from an act of a person that occurred before the
21 effective date of this Act is governed by the law in effect on the
22 date the act occurred, and the former law is continued in effect for
23 that purpose.

24 SECTION 24. This Act takes effect on the date on which the
25 constitutional amendment proposed by the 84th Legislature, Regular
26 Session, 2015, to change the composition of the grand jury takes
27 effect. If that amendment is not approved by the voters, this Act

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1 has no effect.