

1-1 By: Buckingham S.B. No. 1424
 1-2 (In the Senate - Filed March 8, 2017; March 16, 2017, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 May 17, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; May 17, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1424 By: Whitmire

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to criminal procedure, including grand jury proceedings
 1-22 and the appointment of an attorney pro tem for certain criminal
 1-23 proceedings.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Articles 2.07(a), (b), (b-1), and (d), Code of
 1-26 Criminal Procedure, are amended to read as follows:

1-27 (a) Whenever an attorney for the state is disqualified to
 1-28 act in any case or proceeding, is absent from the county or
 1-29 district, or is otherwise unable to perform the duties of the
 1-30 attorney's [his] office, or in any instance where there is no
 1-31 attorney for the state, the judge of the court in which the attorney
 1-32 [he] represents the state may appoint, from any county or district,
 1-33 an [any competent] attorney for the state or may appoint an
 1-34 assistant attorney general to perform the duties of the office
 1-35 during the absence or disqualification of the attorney for the
 1-36 state.

1-37 (b) Except as otherwise provided by this subsection, [~~if the~~
 1-38 ~~appointed attorney is also an attorney for the state,~~] the duties of
 1-39 the appointed office are additional duties of the appointed
 1-40 attorney's [his] present office, and the attorney [he] is not
 1-41 entitled to additional compensation. This subsection does not
 1-42 [Nothing herein shall] prevent a commissioners court of a county
 1-43 from contracting with another commissioners court to pay expenses
 1-44 and reimburse compensation paid by a county to an attorney [~~for the~~
 1-45 state] who is appointed to perform additional duties.

1-46 (b-1) An attorney for the state who is not disqualified to
 1-47 act may request the court to permit the attorney's recusal [him to
 1-48 recuse himself] in a case for good cause, and on [upon] approval by
 1-49 the court the attorney is disqualified.

1-50 (d) In this article, "attorney for the state" means a county
 1-51 attorney with criminal jurisdiction, a district attorney, or a
 1-52 criminal district attorney.

1-53 SECTION 2. Chapter 20, Code of Criminal Procedure, is
 1-54 amended by adding Article 20.013 to read as follows:

1-55 Art. 20.013. WHO MAY BE INVESTIGATED. (a) Except as
 1-56 provided by Subsection (b), a grand jury may not investigate a
 1-57 person who is accused or suspected of an offense and may not vote to
 1-58 present an indictment for the offense if the person has previously
 1-59 been investigated by a grand jury for the same offense and that
 1-60 grand jury found no bill of indictment.

2-1 (b) A grand jury may investigate, and may present an
2-2 indictment with respect to, a person described by Subsection (a)
2-3 only if the attorney representing the state establishes in an ex
2-4 parte hearing that it is in the interest of justice that the person
2-5 be investigated by a subsequent grand jury for the same offense.

2-6 SECTION 3. Article 27.03, Code of Criminal Procedure, is
2-7 amended to read as follows:

2-8 Art. 27.03. MOTION TO SET ASIDE INDICTMENT. In addition to
2-9 any other grounds authorized by law, a motion to set aside an
2-10 indictment or information may be based on the following:

2-11 1. That it appears by the records of the court that the
2-12 indictment was not found by at least nine grand jurors, or that the
2-13 information was not based upon a valid complaint;

2-14 2. That some person not authorized by law was present when
2-15 the grand jury was deliberating upon the accusation against the
2-16 defendant, or was voting upon the same; ~~and~~

2-17 3. That the grand jury was illegally impaneled; provided,
2-18 however, in order to raise such question on motion to set aside the
2-19 indictment, the defendant must show that the defendant ~~he~~ did not
2-20 have an opportunity to challenge the array at the time the grand
2-21 jury was impaneled; and

2-22 4. That the grand jury improperly investigated a person in
2-23 violation of Article 20.013.

2-24 SECTION 4. Article 52.09(c), Code of Criminal Procedure, is
2-25 amended to read as follows:

2-26 (c) An attorney pro tem appointed under Article 52.01(d) ~~of~~
2-27 ~~this code~~ is entitled to compensation in the same amount and manner
2-28 as an attorney appointed to represent an indigent person ~~[pro tem~~
2-29 ~~appointed under Article 2.07 of this code]~~. The district judge
2-30 shall set the compensation of the attorney pro tem based on the
2-31 sworn testimony of the attorney or other evidence that is given in
2-32 open court.

2-33 SECTION 5. Section 574.004, Government Code, is amended to
2-34 read as follows:

2-35 Sec. 574.004. ASSISTANCE BY ATTORNEY GENERAL. This
2-36 ~~[Nothing in this]~~ chapter does not ~~[shall]~~ prevent the attorney
2-37 general from providing assistance to district attorneys, criminal
2-38 district attorneys, and county attorneys on request by allowing
2-39 assistant attorneys general to serve as duly appointed and
2-40 deputized assistant prosecutors, nor does ~~[shall]~~ this chapter
2-41 prohibit the appointment of an assistant attorney general as an
2-42 attorney pro tem pursuant to Article 2.07, Code of Criminal
2-43 Procedure.

2-44 SECTION 6. Articles 2.07(c), (e), (f), and (g), Code of
2-45 Criminal Procedure, are repealed.

2-46 SECTION 7. The change in law made by this Act in amending
2-47 Article 2.07, Code of Criminal Procedure, applies only to the
2-48 appointment of an attorney pro tem that occurs on or after the
2-49 effective date of this Act. The appointment of an attorney pro tem
2-50 that occurs before the effective date of this Act is governed by the
2-51 law in effect on the date the attorney pro tem was appointed, and
2-52 the former law is continued in effect for that purpose.

2-53 SECTION 8. The change in law made by this Act applies to a
2-54 grand jury impaneled on or after the effective date of this Act. A
2-55 grand jury impaneled before the effective date of this Act is
2-56 governed by the law in effect on the date the grand jury was
2-57 impaneled, and the former law is continued in effect for that
2-58 purpose.

2-59 SECTION 9. This Act takes effect September 1, 2017.

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