

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 135  
By: Whitmire; Ellis  
Criminal Justice  
3/10/2015  
Committee Report (Substituted)

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

C.S.S.B. 135 amends Title 1 (Code of Criminal Procedure), Chapter 19 (Organization of the Grand Jury), Code of Criminal Procedure, concerning the methods for selection of members for a grand jury by district court judges. The purposes of the amendments are to abolish and repeal from law the appointment of and then the use of grand jury commissioners to select members for a grand jury. The grand jury commissioner method is also known as the key-man method.

Left in place from current law is the alternative method that uses random jury pools from which the judge selects the members after qualifying them personally. This is very similar to the selection of petit juries (trial juries). Also left in place are the qualifications for service as a grand juror and operational procedures, including challenges to the make of the grand jury and extending the time of service of the grand jury to complete its business.

Texas and California are the only two states that allow the grand jury commissioner method of selection for grand jury members. The federal court system and all other states use the random jury pool call and selection method. Approximately one-half of the state courts in Texas have switched to using the random jury call pool method, most notable Bexar County and El Paso County.

In 1977 the United States Supreme Court warned that, although it has upheld the facial constitutionality of the key-man system, the Texas system is "highly subjective" and "susceptible of abuse as applied."

The most often criticized element of the key-man method is that a judge will appoint three to five individuals who they are familiar with, who will then select 12 to 14 of their acquaintances. This can lead to a grand jury that is not representative of the county population in racial, economic status, and residence issues (areas of the county may not be represented). Critics also say it leads to an older (mostly retired due to time requirements), law enforcement-friendly jury.

C.S.S.B. 135 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 a district judge, rather than authorizes a 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. 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, rather than in the same manner as provided for grand jurors selected by a jury commission.

Deletes Subsection (a) designation and existing text requiring a district judge to appoint jury commissioners and the requirements as set forth for the number of jury commissioners, their appointment and notification, terms of office compensation, and qualification. Deletes Subsection (b) designation.

SECTION 2. Amends Article 19.07, Code of Criminal Procedure, as follows:

Art. 19.07. EXTENSION BEYOND TERM OF PERIOD FOR WHICH GRAND JURORS SHALL SIT. Deletes 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.

SECTION 3. Amends Article 19.08, Code of Criminal Procedure, to prohibit a person from being selected or serving as a grand juror who does not possess certain qualifications, including that the person must not have served as grand juror, rather than a grand juror or jury commissioner, in the year before the date on which the term of court for which the person has been selected as a grand juror begins.

SECTION 4. Amends Article 19.19, Code of Criminal Procedure, as follows:

Art. 19.19. JURORS TO ATTEND FORTHWITH. Requires 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, as follows:

Art. 19.20. TO SUMMON QUALIFIED PERSONS. Requires a court, on directing the sheriff to summon grand jurors, rather than to 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. Makes nonsubstantive changes.

SECTION 6. Amends Article 19.23, Code of Criminal Procedure, as follows:

Art. 19.23. MODE OF TEST. Provides that in trying the qualification of any person to serve as a grand juror, he is required to be asked:

- 1 and 2. Makes no change to these questions.
3. Have you ever been convicted of a misdemeanor theft or any felony? Makes a nonsubstantive change.
4. Are you under indictment or other legal accusation for misdemeanor theft or for any felony?

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 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, rather than qualify and impanel, two alternates, rather than not more than two alternates, to serve on disqualification or unavailability of a juror during the term of the grand jury. Requires the attorney representing the state, on learning that a grand

juror has become disqualified or unavailable during the term of the grand jury, to prepare an order for the court identifying the disqualified or unavailable juror, stating the basis for the disqualification or unavailability, dismissing the disqualified or unavailable juror from the grand jury, and naming one of the alternates as a member of the grand jury. Authorizes the procedure established by this subsection to be used on disqualification or unavailability of a second grand juror during the term of the grand jury. Provides that, for the purposes of this section, 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 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 the officer who summoned the grand jurors acted corruptly in summoning any one or more of them.

SECTION 9. Amends Section 24.014(b), Government Code, to authorize the judge to impanel grand and petit jurors as provided by law, rather than authorize the judge to appoint jury commissioners who select and draw grand and petit jurors as provided by law.

SECTION 10. 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.

SECTION 11. 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.

SECTION 12. Amends Section 24.396(b), Government Code, to authorize the judge of the 218th District Court to impanel grand juries in each county, rather than select jury commissioners and impanel grand juries in each county.

SECTION 13. Amends Section 24.487(b), Government Code, to authorize the judge of the 341st District Court to impanel grand juries in each county, rather than select jury commissioners and impanel grand juries in each county.

SECTION 14. 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.

SECTION 15. 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.

SECTION 16. Amends the heading to Section 402.024, Government Code, to read as follows:

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

SECTION 17. Amends Section 402.024(b), Government Code, to require the attorney general to defend a state grand juror, rather than a state grand jury commissioner or state grand juror, who is a defendant in an action in any court if certain circumstances apply, and make a conforming change.

SECTION 18. (1) Repealers: Article 19.02 (Notified of Appointment), 19.03 (Oath of Commissioners), 19.04 (Instructed), 19.05 (Kept Free From Intrusion), 19.06 (Shall Select Grand Jurors), 19.09 (Names Returned), 19.10 (List to Clerk), 19.11 (Oath to Clerk), 19.12 (Deputy Clerk Sworn), 19.13 (Clerk Shall Open Lists), 19.14 (Summoning), 19.15 (Return of Officer), and 19.17 (Failure to Select), Code of Criminal Procedure.

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

SECTION 19. 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 20. Effective date: September 1, 2015.