

SUBJECT: Secrecy in grand jury proceedings

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Place, Talton, Farrar, Nixon, Pickett
0 nays
4 absent — Greenberg, Hudson, Pitts, Solis

SENATE VOTE: On final passage, May 5 — voice vote

WITNESSES: No public hearing

BACKGROUND: The deliberations of a grand jury are secret and any grand juror or bailiff who divulges anything that transpires are can be punished by imprisonment of up to 30 days and a fine of up to \$500. Witnesses are required to swear that they will not divulge any matter about which they were interrogated and that they will keep the grand jury proceedings secret. Witnesses are can be punished by a fine of up to \$500 and imprisonment of up to six months.

DIGEST: SB 1074 would make the proceedings of a grand jury secret. A grand juror, bailiff, interpreter, stenographer or other person recording the proceedings who disclosed anything that transpired before the grand jury, whether or not it was recorded, would be subject to a punishment of a fine of up to \$500 and imprisonment of up to 30 days.

Prosecutors would be prohibited from disclosing anything that transpired before the grand jury. Prosecutors would be able to disclose records, transcriptions of the records and information from the proceedings to grand jurors, another grand jury, a law enforcement agency or a prosecutor, in the performance of their official duties. The prosecutor would have to warn the person that they have a duty to keep the information secret. Anyone who disclosed information for unauthorized purposes would be subject to a fine of up to \$500 and imprisonment of up to 30 days.

Defendants would be able to petition a court to order information disclosed in connection with a judicial proceeding. The court could grant the request upon showing of a particularized need. All persons who are parties to the judicial proceedings and other persons as required by the court would be entitled to receive notice of the defendants' request and to appear before the court. The court would have to allow interested parties to present arguments concerning the continuation or end to the secrecy requirement. Persons who receive information and disclose it would be subject to a fine of up to \$500 and imprisonment of up to 30 days.

SB 1074 would restrict the persons who may be present in a grand jury room during proceedings to the grand jurors, bailiffs, the prosecutor, witnesses, interpreters, and stenographer or other person recording the proceedings. Only grand jurors could be in the room while the grand jury is deliberating.

Questions asked by the grand jury or the prosecutor to a person accused or suspected of a crime and the person's testimony would have to be recorded. Prosecutors would be responsible for maintaining all records, except a stenographers notes, and transcriptions of those records.

SB 1074 would take effect September 1, 1995.

**SUPPORTERS
SAY:**

SB 1074 would ensure that grand jury proceedings are secret and prevent prosecutors and others who receive this secret information from releasing it to the public. It is important to extend the current secrecy requirement for grand jury deliberations to all proceedings to ensure the free exchange of information in a grand jury room and that the information will be kept confidential. This bill would simply codify current case law and practice.

The bill would prohibit prosecutors from disclosing secret information unless it is in the official course of business. Most prosecutors have operated as if the grand jury secrecy requirements applied to them. However, recent incidents involving reporters allegedly receiving records relating to a case against U.S. Senator Kay Bailey Hutchison and a Fort Bend County district attorney illegally releasing grand jury testimony to the press and the public illustrate the need to extend the secrecy requirement to prosecutors. Prosecutors' right to free speech does not extend to disclosing

secret information that they learn during grand jury proceedings. The bill would not hinder prosecutors in doing their jobs because it would allow them to share information with law enforcement officers or others as their duties demand. The bill would require that these persons also keep the information secret.

The bill also would make it illegal for others to receive and disclose secret information. This would prevent persons and the media from revealing information that is confidential and should be kept secret. Revealing this information can hurt the prosecution of a case and have a chilling effect on witnesses testimony.

SB 1074 would ensure that defendants can have access to grand jury information if it is necessary by authorizing defendants to ask courts to release information.

**OPPONENTS
SAY:**

Provisions making it criminal for persons to receive and disclose information could result in an unconstitutional prior restraint on the media. Courts have held that information that is legally obtained can be published. SB 1074 would impede the news media and citizens from reporting on grand jury information and restrict the public's access to government information. The bill could have a chilling effect on persons who may want to talk about a case, but not their specific testimony, who would be afraid that they could be accused of revealing secret information. Penalties should be focused on those who break the law requiring secrecy, not the media or the public. The media already abides by adequate rules to keep testimony secret.

SB 1074 is unnecessary because most of the provisions are required by current case law.