

SUBJECT: Amending the organization of a grand jury

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Moody, Leach, Shaheen, Simpson
0 nays
2 absent — Canales, Hunter

SENATE VOTE: On final passage, March 23 — 31-0

WITNESSES: (*On House companion bill, HB 282*)
For — Kathy Swilley, Johnny Mata, and Kathy Self, Greater Houston Coalition For Justice; Patsy Pate, Greater Houston Coalition for Justice/Victims' Rights Committee; Collette Flanagan and Kristi Lara, Mothers Against Police Brutality; Patricia Cummings, Texas Criminal Defense Lawyers Association; Fidel Acevedo, Texas League of United Latin Americans Citizens; (*Registered, but did not testify:* Hai Bui, Greater Houston Coalition for Justice; Tiana Sanford, Montgomery County District Attorney's Office; Sarah Pahl, Texas Criminal Justice Coalition; Amanda Marzullo, Texas Defender Service; Yannis Banks, Texas NAACP)

Against — Bob Perkins

BACKGROUND: Code of Criminal Procedure, art. 19 allows jury commissioners appointed by the district judge to select prospective grand jurors from the community at large. The jury commissioners must meet certain qualifications, including that they can read and write in English, are qualified jurors, have no suit in court that requires a jury, are residents of different portions of the county, and have not served as jury commissioner within the past year.

Art. 19.23 requires, in trying the qualifications of any person to serve as a grand juror, that the person be questioned on whether the person had been

convicted of or is under indictment for a felony. The person is not required to be questioned about misdemeanor offenses.

DIGEST:

SB 135 would remove provisions requiring jury selection by jury commissioners as a method for organizing a grand jury and would remove the provisions regarding commissioner qualifications. The bill also would require a judge to direct that between 20 and 125 prospective grand jurors be selected and summoned in the same way as panels for the trial of civil cases in district courts.

The bill would require that when testing the qualifications of a grand juror, the person be asked if he or she has ever been convicted of misdemeanor theft or if the person was under indictment or legal accusation for misdemeanor theft.

The bill would require the court to select 12 individuals to serve as grand jurors and two additional individuals to serve as alternate grand jurors. The bill would allow the selection to be made only when at least 14 qualified jurors were present. In making these selections, the court would be required to consider the county's demographics related to race, ethnicity, sex, and age.

The bill would add that a person would be considered unavailable to serve on a grand jury for any reason determined by the court as constituting good cause for dismissing a juror. The bill also would repeal several sections in the Code of Criminal Appeals regarding organization of the grand jury, and part of a section of the Government Code regarding empaneling a grand jury.

This bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

SB 135 would repeal the outdated grand jury commissioner jury selection method — also known as the “key man” system — currently used in Texas and would require a random jury pool call and selection method that half of the state courts in Texas already are using. Almost every other state and the federal court system has moved from using a key man

system to the random selection method. Many judges in Texas either choose juries themselves or get their jury commissioners to choose juries in the way the judge feels is best. The system in Texas should be standardized under the random jury pool call and selection method that would be implemented by this bill.

The bill would lead to more diversity on grand juries by selecting jurors through random selection and requiring the court to consider the county's demographics related to race, ethnicity, sex, and age when selecting grand jurors and alternate grand jurors. Grand juries should be more reflective of the diverse communities they serve. Allowing jury commissioners under the key man system to select their acquaintances to serve on the jury can lead to a jury that is not representative of a county's population.

Amending the grand jury selection system would place more community confidence in grand juries. Assuring that those selected were not just acquaintances of the judge or commissioner would increase the legitimacy of grand juries in Texas. The current system allows for the grand jury to be stacked with individuals who have close ties to the legal and criminal justice system. This process is unfair and discriminatory and does not represent a broad cross-section of the community. Using the random selection method also would reduce repetitive service by the same jurors.

The bill would update the reasons to seat an alternate juror to include any other reason the court determined was good cause for excusing a juror. The previous reasons for considering a juror as unavailable to serve were only in cases of death or illness, and these conditions are much too restrictive.

**OPPONENTS
SAY:**

SB 135 actually would decrease the diversity of juries in smaller counties, which are much more likely to get a more diverse jury through the key man system than through the random selection method. Smaller counties need jury commissioners to select individuals to be on the jury to ensure its diversity. Because of the smaller population from which to choose, random selection is likely to produce a jury that is not diverse at all. Furthermore, a smaller population makes it more difficult to find enough

individuals to fill a jury. Commissioners and judges should be able to select individuals in these counties.

This bill would slow the court process by requiring each jury candidate to be individually interviewed for eligibility in the random selection process. The current key man system speeds up the process because it allows for a panel of individuals to be selected who already have an understanding of the judicial system.

NOTES: The House companion bill, HB 282 by Dutton, was placed on the General State Calendar on May 8 and postponed on May 11.