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FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 2/17/03 HB 109/HJCS/aHFl#1

SHORT TITLE: Grand Jury Hearings SB _____

ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
					General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files, with relevant information from original agency analyses incorporated.

Responses on Original HB 109 Received From

Administrative Offices of the Courts

Administrative Offices of the District Attorney

Office of the Public Defenders

Office of the Attorney General

SUMMARY

Synopsis of HFl#1 Amendment

The House Floor has amended the House Judiciary Committee Substitute for House Bill 109 as follows:

1. The amended bill reinstates the provision establishing the target's attorney may advise the target witness, but may not speak such that he can be heard by the grand jurors, or otherwise participate in the proceeding.
2. The amended bill also clarifies that any questions or exhibits to be submitted by the target, or his defense counsel, must be provided to the district attorney or attorney general no later than 24 hours in advance of the proceeding.
3. The amended bill strikes all of Section 5. This Section provided that the district judge presiding over the grand jury proceedings may make determinations regarding disputed

questions of law raised by the jury foreperson, prosecuting attorney or target.

4. With reference to the substitute's allowance for that evidence that *may* disprove or reduce a charge, the amended bill heightens the standard to that evidence that *would* disprove or reduce a charge. This same amendment is consistently made later in the bill.
5. The amended bill requires the target, or his counsel, to advise the grand jury at least 24 hours in advance of the proceeding as to the existence of evidence that would disprove or reduce an accusation.
6. The amended bill narrows the window of time during which targets in custody and out of custody may be required to testify after receiving target notice. A target that is in custody cannot be compelled to testify fewer than 4 days following receipt of the notice, and a target that is not in custody cannot be compelled to testify fewer than 10 days following receipt of the notice.

Synopsis of Original Bill

The House Judiciary Committee Substitute for House Bill 109 amends the law governing grand jury hearings to provide:

1. An indictment may be quashed if a member of the jury was not qualified to serve due to a conflict of interest, bias, partiality, or inability to follow the law.
2. An indictment may be quashed if a member of the grand jury is likely to be called as a witness at the trial.
3. A "target's" attorney may submit proposed questions and exhibits to the district attorney or the attorney general. Current law provides that the target's attorney may only be present in the proceeding while the target is testifying, and may only advise the target witness in such a manner that he cannot be heard by the grand jurors. Currently, the target's attorney may not otherwise participate in the proceeding.
4. The target may request that the court release a sealed "no-bill" *without* a showing of good cause.
5. The district court judge presiding over the grand jury proceeding shall make determinations /rulings on questions of law raised by the grand jury foreman, the prosecuting attorney, or the target.
6. All evidence that is lawful, competent and relevant shall be allowed to go before the grand jury. The rules of evidence shall not apply.
7. The target, or his legal counsel, may alert the grand jury to the existence of evidence that *may* disprove or reduce an accusation. This is to be done through the prosecuting attorney who is to assist in the jury, in writing, regarding the existence of the exculpatory evidence.
8. The prosecuting attorney is to use reasonable diligence in notifying a person, in writing,

that the person is the target of a grand jury investigation, unless the court makes a determination, by clear and convincing evidence, that the target is a flight risk, will obstruct justice, or pose a danger to another person. The bill sets forth in detail what the prosecutor's written statement of notification to the target must contain, including the target's right to testify before the grand jury, to choose to remain silent, and to the assistance of counsel during the grand jury investigation.

Significant Issues

1. By raising the standard to clear and convincing evidence by which a judge must decide whether notification may; result in flight, obstruction of justice, or pose a danger to others, the number of notice sent to targets will increase. This may result in more targets that run, or that take actions to impede the investigation.

According to the Office of the Public Defenders:

2. This bill will enhance fairness and impartiality in the grand jury process, particularly by prohibiting participation by an individual who has a conflict of interest, or who may be called as a witness in the case.
3. Presently, there is no requirement that evidence submitted by the prosecutor be competent or relevant to the matter at hand. This results in the introduction of much evidence that may prejudice the grand jury against the accused target. This bill changes this. Also, the bill promotes greater balance by permitting the target to advise the grand jury in writing of exculpatory evidence.
4. This bill provides at least a minimal opportunity for the target to be informed of, prepare for, and participate in, the grand jury proceeding.

According to the Office of the District Attorneys:

5. The bill will severely impact the performance of the courts, district attorneys and public defenders, all of which will require additional FTEs to comply with the procedural and substantive changes in this bill.

FISCAL IMPLICATIONS

There are no direct fiscal implications for the state with HB109/HJCS. However, as the Administrative Offices of the district attorneys have noted, a more complex grand jury process will result in additional FTE and budget expenditures for the courts, the public defenders office and the district attorneys office.

According to the district attorneys office, these additional FTE and budget demands cannot be absorbed into existing resources.