

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 828

INTRODUCER: Senator Polsky

SUBJECT: Grand Juries

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____

I. Summary:

SB 828 amends s. 905.27, F.S., the statute which prohibits the disclosure of testimony or evidence received by a grand jury. The statute currently authorizes a court to require that testimony be disclosed for three purposes: ascertaining whether the testimony is consistent with the testimony given by the witness before the court, determining whether the witness is guilty of perjury, or furthering justice.

The bill amends the third exception of “furthering justice” by expanding that concept to include furthering a public interest when the disclosure of testimony is requested by the media or an interested person. The testimony may be disclosed if:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between a subject of the grand jury investigation and a person who was a minor at the time of the inquiry;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

Even if these provisions are met, the court may limit the disclosure of testimony, including redacting certain testimony.

The bill also amends s. 905.27, F.S., to include the custodian of a grand jury record to the list of persons who may not disclose the testimony of a witness examined before a grand jury or disclose other evidence received by the grand jury.

The act takes effect July 1, 2023.

II. Present Situation:

The Grand Jury

Background

The state court system has two types of juries: grand juries and petit juries. While a petit jury, also known as a trial jury, weighs evidence and returns a verdict of guilt or innocence after hearing from both sides, a grand jury does not hear from both sides. A grand jury only hears witnesses presented by a state attorney and determines whether there is sufficient evidence to formally indict, or charge, an accused person with a crime.¹ In other words, the grand jury simply initiates the criminal prosecution.²

The modern grand jury is rooted in ancient tradition. It originated in England centuries ago and was brought to this country by the early colonists. A grand jury was formally recognized in the Magna Carta in 1215 but can be traced even earlier to 997 A.D., when an Anglo-Saxon king, unfortunately named “Ethelred the Unready,” tasked an investigative body to perform “its duty by accusing no innocent person and sheltering no guilty one.”³

The State Constitution

According to the State Constitution, no one may be tried for a capital crime, a crime punishable by death, unless he or she is indicted by a grand jury.⁴ This is the only instance in which a grand jury indictment is required. For all other crimes, the state attorney may initiate criminal charges.

Composition and Investigative Power

A grand jury is composed of at least 15 and no more than 21 citizens who have been summoned and empaneled by a circuit court judge.^{5,6} In order to return an indictment, at least 12 grand jurors must agree.⁷ Although the grand jury is considered an agency of the circuit court, it works separately and independently from the court.⁸

To aid a grand jury in its broad power of investigation, it is given the authority to subpoena witnesses through the state attorney.⁹ While grand juries primarily focus on capital cases, they may also be used to investigate controversies involving the alleged illegal acts of public officials.¹⁰

¹ The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *Chapter 30 Florida Grand Jury Handbook* (on file with the Senate Committee on Judiciary).

² Gregg D. Thomas, Carol Jean LoCicero, and Linda R. Norbut, The Florida Bar, *The Grand Jury* (Revised Aug. 1, 2020) <https://www.floridabar.org/news/resources/rpt-hbk/rpt-hbk-13/>.

³ The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *supra* note 1.

⁴ FLA. CONST. art. I, s. 15(a). The full text of section 15 is “No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.”

⁵ Section 905.01(1), F.S.

⁶ The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *supra* note 1.

⁷ Section 905.23, F.S.

⁸ The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *supra* note 1.

⁹ Section 905.185, F.S.

¹⁰ Thomas, et al., *supra* at note 2.

The Work of the Grand Jury

Secrecy

The majority of the grand jury's work is focused on listening to witnesses and deciding whether the evidence presented justifies an indictment. For the proceedings to function as they are designed, it is essential that the proceedings are kept secret. Section 905.24, F.S., states:

Grand jury proceedings are secret, and a grand juror or an interpreter appointed pursuant s. 90.6063(2) shall not disclose the nature or substance of the deliberations or vote of the grand jury.

Consistently and similarly applying the need for secrecy, s. 905.25, F.S., states:

A grand juror shall not be permitted to state or testify in any court how she or he or any other grand juror voted on any matter before them or what opinion was expressed by herself or himself or any other grand juror about the matter.

Who May Attend a Grand Jury Session

To underscore the importance of secrecy, the statutes provide the limited number and specific persons who may be present during a session. No person may be present at the grand jury sessions except:

- The witness under examination;
- One attorney who represents the witness and advises and consults the witness;
- The state attorney and her or his assistant state attorneys;
- The court reporter or stenographer; and
- The interpreter.¹¹

No one is allowed to be present while the grand jurors are deliberating or voting, except an interpreter who may be present after he or she swears to refrain from making any personal interjections and who also commits to uphold the secrecy of the proceeding.¹²

Confidential Nature of Notes and Transcripts

The notes, records, and transcripts of the stenographer or court reporter are filed with the clerk who is charged with keeping them in a sealed container that is not subject to public inspection. They are confidential and exempt from the provisions of s. 119.071(1) and s. 24(a), Art. I of the State Constitution and may be released by the clerk *only* upon the request by a grand jury for use by the grand jury or upon order of the court pursuant to s. 905.27, F.S.¹³

¹¹ Section 905.17(1), F.S.

¹² Section 905.17(3), F.S.

¹³ Section 905.17(1), F.S.

Grand Jury Testimony May Not Be Disclosed

Section 905.27(1), F.S., prohibits a grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person who appears before the grand jury from disclosing the testimony of a witness who was examined before the grand jury or any other evidence received by it except when required by a court to disclose the testimony for the purpose of:

- Ascertaining whether it is consistent with the testimony given by the witness before the court;
- Determining whether the witness is guilty of perjury; or
- Furthering justice.¹⁴

Section 905.27(2), F.S., states that it is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause, or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, except when the testimony is or has been disclosed in a court proceeding.

When the court orders the disclosure of the testimony for use in a *criminal* case it may be disclosed:

- To the prosecuting attorney in the court where the case is pending.
- By the prosecuting attorney to his or her assistants, associates, and employees.
- To the defendant.
- To the defendant's attorney.
- By the defendant's attorney to his or her legal associates and employees.

When the court orders the disclosure of the testimony for use in a *civil* case, it may be disclosed to the parties and their attorneys, and by the attorneys to their legal associates and employees. However, the grand jury testimony provided to those persons by the court may only be used in the defense or prosecution of the civil and criminal case and for no other purpose.

Whoever is convicted of violating these provisions is guilty of a first degree misdemeanor and the violation constitutes contempt of court.¹⁵

Jeffrey Epstein Grand Jury Testimony, 2006

In 2006, Jeffrey Epstein was investigated by the Palm Beach Police Department for allegedly sexually abusing five young girls, all under the age of 16 years, at his mansion. In addition, several other young girls who were not yet 18 years old also alleged that they were sexually abused by Jeffrey Epstein at his mansion.¹⁶

The Palm Beach Police Department contacted State Attorney Barry Krischer and asked that he charge Mr. Epstein with four counts of unlawful sexual activity with a minor and one count of

¹⁴ Section 905.27(1), F.S.

¹⁵ Section 905.27 (4) and (5), F.S.

¹⁶ Holly Baltz, The Palm Beach Post, *Why Was Jeffrey Epstein in 2006 Charged Only with Picking Up a Prostitute? Where We Stand* (Feb.9, 2023) <https://www.palmbeachpost.com/story/news/2023/02/09/palm-beach-post-lawsuit-to-unseal-jeffrey-epstein-grand-jury-records/69867241007/>.

lewd and lascivious molestation. If convicted of those charges, Mr. Epstein would have been sent to prison for decades. Instead of charging Jeffrey Epstein as the police recommended, State Attorney Krischer chose an unusual legal maneuver and presented the case to a grand jury. Surprisingly, the grand jury returned only one charge, that of soliciting a prostitute. Mr. Epstein was arrested after the indictment and charged with one felony count of soliciting a prostitute.¹⁷

According to one media report, this was the first time a sex crime case was presented to a grand jury by State Attorney Krischer's office. Although 13 teenage girls gave virtually identical accounts of their interactions with Mr. Epstein, the state attorney's office called only one 14-year-old girl to testify before the grand jury.¹⁸

In November 2019, The Palm Beach Post sued the current State Attorney, who was no longer Mr. Krischer, and the Clerk and Comptroller of Court in an effort to obtain a court order to unseal the grand jury proceedings and reveal why the grand jury returned only minimal charges. Because the grand jury's proceedings are private, The Post relied on s. 905.27(1), F.S., which allows a judge to disclose testimony for the purpose of "furthering justice."

The Palm Beach Post, through its attorney, argued in part:

Access to the grand jury materials will allow the public to determine whether the grand jury process, and the secrecy that comes with it, was used to further justice or, instead, operated to shield Epstein and his co-conspirators from the consequences of their criminal activities.¹⁹

In December 2021, the circuit judge determined that the grand jury documents and records could not be released. The Palm Beach Post has appealed this ruling to the Fourth District Court of Appeal.²⁰

III. Effect of Proposed Changes:

SB 828 amends s. 905.27, F.S., the statute which prohibits the disclosure of testimony or evidence received by a grand jury. The statute currently authorizes a court to require that testimony be disclosed for three purposes: ascertaining whether the testimony is consistent with the testimony given by the witness before the court, determining whether the witness is guilty of perjury, or furthering justice.

The bill amends the third exception of "furthering justice" by expanding that concept to include furthering a public interest when the disclosure of testimony is requested by the media or an interested person. The testimony may be disclosed if:

¹⁷ *Id.*

¹⁸ Jane Musgrave, John Pacenti, and Lulu Ramadan, The Palm Beach Post, *How the Epstein Saga Could've Been Ended Years Ago: To His First Prosecutors, Victims Were Prostitutes* (Nov. 20, 2019) <https://www.usatoday.com/story/news/2019/11/20/jeffrey-epstein-saga-couldve-been-ended-attorney-barry-krischer/4237757002/>.

¹⁹ *CA Florida Holdings, LLC, Publisher of THE PALM BEACH POST, v. DAVE ARONBERG, as State Attorney of Palm Beach County, Florida; SHARON R. BOCK, as Clerk and Comptroller of Palm Beach, County, Florida*, Motion of Plaintiff for Summary Judgment, p. 3 (April 22, 2021) (on file with the Senate Committee on Judiciary).

²⁰ Baltz, *supra* at note 15.

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- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

Even if these provisions are met, the court may limit the disclosure of testimony, including redacting certain testimony.

The bill also amends s. 905.27(1), F.S., to include the custodian of a grand jury record to the list of persons who may not disclose the testimony of a witness examined before a grand jury or other evidence received by the grand jury.

The bill also amends s. 905.27(2), F.S., to provide that, if a court orders the disclosure of testimony for use in a criminal case to the prosecuting attorney and his or her assistants and to the defendant and his or her attorney and assistants, the testimony can only be used in the defense or prosecution of the criminal case and for no other purpose.

Section 2 of the bill reenacts s. 905.17(1) and (2), F.S., which relates to who may be present during a session of a grand jury, to incorporate the amendments made to s. 905.27, F.S.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate impact on the clerks of court if additional grand jury records are required to be released by a court. However, because the provisions of this bill are drawn very narrowly, the impact should be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 905.27 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.