

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 851 Disclosure of Grand Jury Testimony

**SPONSOR(S):** Gossett-Seidman

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 828

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N	Leshko	Hall
2) Ethics, Elections & Open Government Subcommittee			
3) Judiciary Committee			

### **SUMMARY ANALYSIS**

Section 905.27, F.S., prohibits any person present or appearing during a grand jury proceeding, including a grand juror, state attorney, assistant state attorney, court reporter, stenographer, or interpreter from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. A court may authorize disclosure of such testimony for the following purposes:

- 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.

It is unlawful for any person to knowingly publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly cause or permit to be published, broadcasted, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a criminal or civil proceeding. If the court orders the disclosure of grand jury testimony in a criminal or civil case, the testimony may only be disclosed to specified persons and can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever. A person who illegally discloses grand jury testimony commits a first-degree misdemeanor and such violation shall constitute criminal contempt of court.

HB 851 amends s. 905.27, F.S., to include the custodian of a grand jury record among the individuals who are prohibited from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. However, under the bill, a court may order the disclosure of grand jury testimony for the purpose of furthering justice which may include furthering a public interest when the disclosure is requested by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, and:

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

The bill does not limit the court's ability to limit the disclosure of such testimony, including, but not limited to, redaction.

The bill may have an indeterminate negative fiscal impact on clerk's offices as their workload may increase if additional records are ordered to be released, some requiring redactions. However, the records affected by the bill are very limited, as such, any additional costs will likely be absorbed within existing resources.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

A grand jury's primary role is to determine whether sufficient evidence exists to justify indicting an accused individual.<sup>1</sup> To make such determinations, a grand jury also serves as an investigating body with subpoena powers.<sup>2</sup> In Florida, a grand jury indictment is required only to try a person for a capital offense; i.e., one where the death penalty may be given.<sup>3</sup> Otherwise, the state attorney has concurrent authority to file a formal accusation of the commission of a crime (an "information").<sup>4</sup> An information is used routinely to charge individuals in Florida. In addition to capital cases, grand juries often are utilized for controversial cases such as those involving alleged wrongdoing by public officials.<sup>5</sup>

#### Who May be Present During Grand Jury Sessions

Section 905.17, F.S., provides that no person shall be present at grand jury sessions except:

- The witness under examination;
- One attorney representing the witness;
- The state attorney and his or her assistant state attorneys;
- The court reporter or stenographer; and
- An interpreter.<sup>6</sup>

An attorney representing a witness under examination is permitted to advise and counsel the witness, but may not address the grand jurors, raise objections, make arguments, or otherwise disrupt proceedings before the grand jury. A witness's attorney is subject to the prohibition against disclosing grand jury testimony or other evidence received by the grand jury provided in s. 905.27, F.S.<sup>7</sup>

Any stenographic records, notes, and transcriptions made by the court reporter or stenographer are filed with the clerk who must keep them in a sealed container not subject to public inspection. Such records, notes, and transcriptions are confidential and exempt from public record requirements under s. 119.071(1), F.S., and s. 24(a), art. I, Fla. Const., and may only be released upon a request from the grand jury for use by the grand jury or by order of the court pursuant to s. 905.27, F.S.<sup>8</sup>

#### Prohibitions on Grand Jury Testimony Disclosure and Exceptions

Section 905.27, F.S., prohibits any person present or appearing during a grand jury proceeding, including a grand juror, state attorney, assistant state attorney, court reporter, stenographer, or interpreter from disclosing the testimony of a witness examined before the grand jury or other evidence received by it. A court may authorize disclosure of such testimony for the following purposes:

- 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.<sup>9</sup>

It is unlawful for any person to knowingly publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly cause or permit to be published, broadcasted, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined

<sup>1</sup> S. 905.16, F.S.

<sup>2</sup> S. 905.185, F.S.

<sup>3</sup> S. 15(a), art. I, Fla. Const.

<sup>4</sup> *Id.*

<sup>5</sup> The Florida Bar, *The Grand Jury*, <https://www.floridabar.org/news/resources/rpt-hbk/rpt-hbk-13/> (last visited Mar. 27, 2023).

<sup>6</sup> S. 905.17(1), F.S.

<sup>7</sup> S. 905.17(2), F.S.

<sup>8</sup> S. 905.17(1), F.S.

<sup>9</sup> S. 905.27(1), F.S.

before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a criminal or civil proceeding as follows.<sup>10</sup>

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

- Prosecuting attorney of the court in which such criminal case is pending;
- Prosecuting attorney's assistants, legal associates, and employees;
- Defendant;
- Defendant's attorney; and
- Defendant's attorney's legal associates and employees.

When a court orders the disclosure of such testimony for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and their attorneys' legal associates and employees.

However, the grand jury testimony released by court order can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.<sup>11</sup>

Any person who illegally discloses grand jury testimony is guilty of a first-degree misdemeanor<sup>12</sup> and such violation shall constitute criminal contempt of court.<sup>13</sup>

### Jeffrey Epstein Grand Jury Testimony

In 2006, Palm Beach County police opened an investigation into Jeffrey Epstein regarding allegations of sexual abuse of minors. Palm Beach County police eventually asked the State Attorney to charge Epstein with four counts of unlawful sexual activity with a minor and one count of lewd and lascivious molestation, however the state instead sent Epstein's case to a grand jury.<sup>14</sup> The grand jury ultimately only found sufficient evidence to charge Epstein with one count of soliciting a prostitute.

In 2021, the Palm Beach Post sued the state attorney and clerk's office in an attempt to obtain a court-ordered release of Epstein's grand jury testimony for the purpose of furthering justice, however, the presiding judge ruled against the Post.<sup>15</sup>

The Palm Beach County Clerk of Courts is now working to try to unseal the 2006 grand jury testimony against Epstein to investigate why the grand jury returned only one minimal charge. The Clerk stated that he believes "that the grand jury records for the Epstein case should be released to the public."

### **Effect of Proposed Changes**

HB 851 amends s. 905.27, F.S., to include the custodian of a grand jury record among the individuals who are prohibited from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. However, under the bill, a court may order the disclosure of grand jury testimony for the purpose of furthering justice which may include furthering a public interest when the disclosure is requested by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, and:

- 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 at the time was a minor;
- The testimony was previously disclosed by a court order; and

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<sup>10</sup> S. 905.27(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> A first-degree misdemeanor under this section is punishable as provided in s. 775.083, or by a fine not exceeding \$5,000, or both.

<sup>13</sup> S. 905.27(4-5), F.S.

<sup>14</sup> Holly Baltz, *Why was Jeffrey Epstein in 2006 charged only with picking up a prostitute? Where we stand*, Palm Beach Daily News, Feb. 10, 2023, <https://news.yahoo.com/why-jeffrey-epstein-2006-charged-100257919.html?ref=upstract.com> (last visited Mar. 27, 2023).

<sup>15</sup> Terri Parker, *Palm Beach County Clerk of Courts working to unseal Jeffrey Epstein grand jury transcripts*, ABC 25 WPBF News, <https://www.wpbf.com/article/palm-beach-county-clerk-courts-working-unseal-jeffrey-epstein-grand-jury-transcripts/38699982> (last visited Mar. 27, 2023).

- The state attorney is provided notice of the request.

The bill does not limit the court's ability to limit the disclosure of such testimony, including, but not limited to, redaction.

The bill provides an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 905.27, F.S., relating to testimony not to be disclosed; exceptions.

**Section 2:** Reenacts s. 905.17, F.S., relating to who may be present during session of grand jury.

**Section 3:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill may have an indeterminate negative fiscal impact on clerk's offices as their workload may increase if additional records are ordered to be released, some requiring redactions. However, the records affected by the bill are very limited, as such, any additional costs will likely be absorbed within existing resources.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**