

1 HB202  
2 209123-1  
3 By Representative Ball  
4 RFD: Judiciary  
5 First Read: 02-FEB-21  
6 PFD: 01/29/2021

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8 SYNOPSIS: Under existing law, certain individuals  
9 involved in the grand jury process are prohibited  
10 from disclosing certain information.

11 This bill would remove grand jury witnesses  
12 from certain provisions limiting disclosure of  
13 grand jury testimony.

14 Under existing law, grand jury proceedings  
15 are not required to be recorded.

16 This bill would provide that all grand jury  
17 proceedings must be recorded by a court reporter or  
18 stenographer.

19 This bill also would provide when a grand  
20 jury witness's testimony may be disclosed by the  
21 state and provides for the disclosure.

22 This bill would repeal the oath of secrecy  
23 for grand jury witnesses.

24 This bill would also make nonsubstantive,  
25 technical revisions to update the existing code  
26 language to current style.

1 A BILL  
2 TO BE ENTITLED  
3 AN ACT

4  
5 Relating to grand juries; to amend Sections  
6 12-16-214, 12-16-215, and 12-16-216, Code of Alabama 1975, to  
7 remove grand jury witnesses from certain provisions limiting  
8 disclosure of grand jury testimony; to add Section 12-16-213.1  
9 to the Code of Alabama 1975, to require grand jury proceedings  
10 to be recorded by a court reporter or stenographer; to provide  
11 for when a testimony may be released by the state, and to  
12 provide for the procedure; to repeal Section 12-16-219, Code  
13 of Alabama 1975, relating to the oath of secrecy for grand  
14 jury witnesses; and to make nonsubstantive, technical  
15 revisions to update the existing code language to current  
16 style.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 12-16-214, 12-16-215, and  
19 12-16-216, Code of Alabama 1975, are amended to read as  
20 follows:

21 "§12-16-214.

22 "The Legislature hereby finds, declares, and  
23 determines that it is essential to the fair and impartial  
24 administration of justice that all grand jury proceedings be  
25 secret and that the secrecy of such proceedings remain  
26 inviolate. The provisions of this division are to be construed

1 for the accomplishment of this purpose and to promote the  
2 following:

3 "(1) That grand juries have the utmost freedom in  
4 their discussions, deliberations, considerations, debates,  
5 opinions, and votes without fear or apprehension that the same  
6 may be subsequently disclosed, or that they may be subject to  
7 outside pressure or influence or injury in their person or  
8 property as a result thereof.

9 "(2) That those persons who have information or  
10 knowledge with respect to the commission of crimes or criminal  
11 acts be encouraged to testify freely and truthfully before an  
12 appropriate grand jury ~~without fear or apprehension that their~~  
13 ~~testimony may be subsequently disclosed, or that they may be~~  
14 ~~subject to injury in their person or property as a result~~  
15 ~~thereof.~~

16 "(3) That those persons who have committed criminal  
17 acts or whose indictment may be contemplated not escape or  
18 flee from the due administration of justice.

19 "(4) That those persons falsely accused of criminal  
20 acts are not subject to public scrutiny or display and their  
21 otherwise good names and reputations are left intact.

22 "§12-16-215.

23 "(a) Except as provided in Section 12-16-213.1, no  
24 ~~No past or present grand juror, past or present grand jury~~  
25 ~~witness or grand jury court reporter or stenographer shall~~  
26 ~~willfully at any time, or interpreter may disclose, or attempt~~  
27 ~~to disclose, directly or indirectly, conditionally or~~

1 ~~unconditionally, by any means whatever, reveal, disclose or~~  
2 ~~divulge or attempt or endeavor to reveal, disclose or divulge~~  
3 ~~or cause to be revealed, disclosed or divulged,~~ any knowledge  
4 or information pertaining to any grand juror's questions,  
5 considerations, debates, deliberations, opinions, or votes on  
6 any case, evidence, or other matter taken within or occurring  
7 before any grand jury of this state.

8 ~~"(b) No~~ Nor shall any person at any time, directly  
9 ~~or indirectly, conditionally or unconditionally by any means~~  
10 ~~whatever, corruptly or with the~~ intent to influence a grand  
11 juror or other person authorized by law to attend a grand  
12 jury, or directly or indirectly, by threat of harm to person  
13 or property, ~~or~~ by force applied to person or property, ~~or~~ by  
14 threatening letter or communication, or by offer of reward,  
15 remuneration, gift, benefit, or thing of value ~~of whatever~~  
16 ~~nature or kind,~~ may obtain, or endeavor to attempt to obtain,  
17 any information pertaining to, or any knowledge of, any grand  
18 juror's questions, considerations, debates, deliberations,  
19 opinions, or votes on any case, evidence, or other matter  
20 taken or transpiring within or before any grand jury of this  
21 state.

22 "§12-16-216.

23 "(a) Except as provided in Section 12-16-213.1, no  
24 ~~past or present grand juror, past or present grand jury~~  
25 ~~witness or grand jury~~ court reporter or stenographer shall  
26 ~~willfully at any time, or interpreter may disclose, or attempt~~  
27 ~~to disclose, directly or indirectly, conditionally or~~

1 ~~unconditionally, by any means whatever, reveal, disclose or~~  
2 ~~divulge or endeavor to reveal, disclose or divulge or cause to~~  
3 ~~be revealed, disclosed or divulged,~~ any knowledge of the form,  
4 nature,    or content of any physical evidence presented to any  
5 grand jury ~~of this state or,~~ any knowledge of the form,  
6 nature,    or content of any question ~~propounded~~ asked to any  
7 person within or before any grand jury ~~or,~~ any comment made by  
8 any person in response thereto,    or any other evidence,  
9 testimony,    or conversation occurring ~~or taken therein~~ before  
10 the grand jury.

11 "(b) No ~~Nor shall any person at any time directly or~~  
12 ~~indirectly, conditionally or unconditionally, by any means~~  
13 ~~whatever, corruptly or with the intent to influence a grand~~  
14 juror or other person authorized by law to attend a grand  
15 jury, ~~or directly or indirectly,~~ by threats of harm to person  
16 or property, ~~or~~ by force applied to person or property ~~or,~~ by  
17 threatening letter or communication, or by offer of reward,  
18 remuneration, gift, benefit,    or thing of value ~~of whatever~~  
19 ~~nature and kind,~~ may obtain,   or ~~endeavor~~ attempt to obtain,     
20 any knowledge of the form, nature,    or content of any physical  
21 evidence presented to any grand jury of this state, ~~or~~ any  
22 knowledge of the form, nature,    or content of any question  
23 ~~propounded~~ asked to any person within or before any grand  
24 jury, ~~or~~ any knowledge of the form, nature,    or content of any  
25 answer or comment made by any person in response thereto, or  
26 any other evidence, testimony, or conversation occurring ~~or~~  
27 ~~taken therein~~ before the grand jury.

1                   "(c) Notwithstanding subsections (a) and (b),  
2           ~~Provided however, the State of Alabama shall not be precluded~~  
3           ~~from using the testimony of a grand jury witness to impeach~~  
4           ~~that witness's testimony in the trial of a criminal case, nor~~  
5           ~~shall the State of Alabama be precluded from using grand jury~~  
6           ~~testimony to prosecute a perjury warrant or indictment, nor~~  
7           ~~shall the State of Alabama be precluded from using grand jury~~  
8           ~~testimony in any manner otherwise permitted by law. Further,~~  
9           ~~provided however, that~~ grand jury evidence and testimony may  
10          be presented to grand juries of other circuits and  
11          jurisdictions upon the issuance of a proper grand jury  
12          subpoena."

13                   Section 2. Section 12-16-213.1 is added to the Code  
14          of Alabama 1975, to read as follows:

15                   §12-16-213.1

16                   (a) Except while the grand jury is deliberating or  
17          voting, all proceedings of the grand jury shall be recorded by  
18          a court reporter or stenographer.

19                   (b) (1) The district attorney of the judicial circuit  
20          shall provide the court reporter or stenographer to properly  
21          record all proceedings before a grand jury.

22                   (2) The district attorney shall retain control of  
23          the transcript prepared by the court reporter or stenographer.

24                   (3) The transcript shall be preserved until all  
25          appeals have been exhausted, unless the proceeding does not  
26          result in an indictment or if an investigation is closed by  
27          the court.

1           (c) (1) In addition to other disclosures authorized  
2 by law or rule, upon the defendant's request, the state shall  
3 provide the defendant with the grand jury transcript of any  
4 witness the state reasonably believes will testify in the  
5 state's case in chief. The state is only required to provide  
6 the portion of the grand jury transcript that relates to the  
7 anticipated subject matter of the witness's testimony.

8           (2) If the state claims that the witness's statement  
9 contains information that is privileged or does not relate to  
10 the subject matter of the witness's testimony, the court shall  
11 inspect the statement in camera. After removing any privileged  
12 or unrelated portions, the court shall order the delivery of  
13 the redacted statement by the state to the defendant. If the  
14 defendant objects to the removal, the court shall preserve the  
15 entire statement with the removed portion indicated, under  
16 seal, as part of the record.

17           (3) The transcript of the witness's grand jury  
18 testimony shall be available to the defendant sufficiently in  
19 advance to avoid any delays or interruptions at trial.

20           Section 3. Section 12-16-219 of the Code of Alabama  
21 1975, relating to the oath of secrecy for grand jury  
22 witnesses, is specifically repealed.

23           Section 4. It is the intent of the Legislature that,  
24 pursuant to Amendment 328 of the Constitution of Alabama of  
25 1901, now appearing as Section 150 of the Official  
26 Recompilation of the Constitution of Alabama of 1901, as



1 amended, the Supreme Court of Alabama shall amend its rules to  
2 conform with this act.

3 Section 5. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.