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## SENATE BILL NO. 694

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on November 20, 2000)

(Patron Prior to Substitute—Senator Stolle)

*A BILL to amend and reenact §§ 19.2-191, 19.2-206, 19.2-208, 19.2-210 and 19.2-213 of the Code of Virginia, relating to special grand juries.***Be it enacted by the General Assembly of Virginia:****1. That §§ 19.2-191, 19.2-206, 19.2-208, 19.2-210 and 19.2-213 of the Code of Virginia are amended and reenacted, as follows:**

§ 19.2-191. Functions of a grand jury.

The functions of a grand jury are ~~two-fold~~ *twofold*:(1) To consider bills of indictment prepared by the attorney for the Commonwealth and to determine whether as to each such bill there is sufficient probable cause to return such indictment "a true bill." ~~This function shall be performed solely by a regular grand jury.~~(2) To investigate and ~~make report thereon concerning~~ *on any condition which that* involves or tends to promote criminal activity, either in the community or by any governmental authority, agency or official thereof. ~~This function~~ *These functions* may be exercised by either a special grand jury or a regular grand jury as hereinafter provided.

§ 19.2-206. When impanelled.

A. Special grand juries may be impanelled by a circuit court (i) at any time upon its own motion, ~~or~~ (ii) upon recommendation of a minority of the members of a regular grand jury that a special grand jury be impanelled, to perform the functions provided for in subdivision (2) of § 19.2-191, *or (iii) upon request of the attorney for the Commonwealth to investigate and report on any condition that involves or tends to promote criminal activity and consider bills of indictment to determine whether there is sufficient probable cause to return each such indictment as a "true bill."*

B. A special grand jury shall be impanelled by a circuit court upon the recommendation of a majority of the members of a regular grand jury if the court finds probable cause to believe that a crime has been committed which should be investigated by a special grand jury impanelled to perform the functions provided for in subdivision (2) of § 19.2-191.

§ 19.2-208. Subpoena power of special grand jury.

The special grand jury may subpoena persons to appear before it to testify and to produce specified records, papers and documents, but before any witness testifies, he shall be warned by the foreman that he need not answer any questions or produce any evidence that would tend to incriminate him, and that the witness may have counsel of his own procurement present when he appears to testify, and at the same time the foreman also shall warn each witness that he may later be called upon to testify in any case that might grow out of the investigation and report of the special grand jury. Notwithstanding the provisions of this section, all provisions of this Code relative to immunity granted to witnesses who testify before a grand jury shall remain applicable.

*A witness who has been called to testify or produce specified records, papers and documents before a grand jury requested by the attorney for the Commonwealth, and who refuses to testify or produce specified records, papers and documents by expressly invoking his right not to incriminate himself, may be compelled to testify or produce specified records, papers and documents by the presiding judge. Such witness who refuses to testify or produce specified records, papers and documents after being ordered to do so by the presiding judge may be held in contempt and may be incarcerated until the contempt is purged by compliance with the order or the grand jury is discharged. When a witness is compelled to testify or produce specified records, papers and documents after expressly invoking his right not to incriminate himself, and the presiding judge has determined that the assertion of the right is bona fide, the compelled testimony, or any information directly or indirectly derived from such testimony or other information, shall not be used against the witness in any criminal proceeding except a prosecution for perjury.*

Notwithstanding the provisions of this section, all provisions of this Code relative to immunity granted to witnesses who testify before a grand jury shall remain applicable.

The foreman shall administer the oath prescribed by law for witnesses, and any member of the special grand jury may examine a witness.

§ 19.2-210. Presence of attorney for the Commonwealth.

The attorney for the Commonwealth shall not be present at any time while the special grand jury is in session except that during the investigatory stage of its proceedings he may be present. *When the special grand jury is impanelled upon motion of the court or recommendation of a regular grand jury,*

60 *he may be present during the investigatory stage only when his presence is requested by the special*  
61 *grand jury or when the special grand jury was empanelled upon his motion. When present before the*  
62 *special grand jury he and may interrogate witnesses provided the special grand jury requests or consents*  
63 *to such interrogation. When the special grand jury was impanelled upon his request, he may examine*  
64 *any witness called to testify or produce evidence, but his examination of a witness shall in no way affect*  
65 *the right of any grand juror to examine the witness.*

66 The attorney for the Commonwealth shall not be present during or after the investigative stage of the  
67 proceedings at any time while the special grand jury is discussing, evaluating or considering the  
68 testimony of a witness or is deliberating in order to reach decisions or prepare its report, except that he  
69 may be present when his legal advice is requested by the special grand jury.

70 § 19.2-212. Provision for court reporter; use and disposition of notes, tapes and transcriptions.

71 A. A court reporter shall be provided for a special grand jury to record, manually or electronically,  
72 and transcribe all oral testimony taken before a special grand jury, but such reporter shall not be present  
73 during any stage of its deliberations. The notes, tapes and transcriptions of the reporter are for the sole  
74 use of the special grand jury, and the contents thereof shall not be divulged by anyone except as  
75 hereinafter provided. After the special grand jury has completed its use of the said notes, tapes and  
76 transcriptions, the foreman shall cause them to be sealed, the container dated, and delivered to the court.

77 The court shall cause the sealed container to be kept safely. If any witness testifying before the  
78 special grand jury is prosecuted subsequently for perjury, the court, on motion of either the attorney for  
79 the Commonwealth or the defendant, shall permit them both to have access to the testimony given by  
80 the defendant when a witness before the special grand jury, and the said testimony shall be admissible  
81 in the perjury case.

82 If no prosecution for perjury is instituted within three years from the date of the report of the special  
83 grand jury, the court shall cause the sealed container to be destroyed.

84 B. *Upon motion to the presiding judge, the attorney for the Commonwealth shall be permitted to*  
85 *review any evidence that was presented to the special grand jury, and shall be permitted to make notes*  
86 *and to duplicate portions of the evidence as he deems necessary for use in a criminal investigation or*  
87 *proceeding. The attorney for the Commonwealth shall maintain the secrecy of all information obtained*  
88 *from a review or duplication of the evidence presented to the special grand jury. Upon motion to the*  
89 *presiding judge by a person indicted by a special grand jury, similar permission to review, note or*  
90 *duplicate evidence shall be extended if it appears that the permission is consistent with the ends of*  
91 *justice and is necessary to reasonably inform such person of the nature of the evidence to be presented*  
92 *against him, or to adequately prepare his defense.*

93 § 19.2-213. Report by special grand jury; return of true bill.

94 At the conclusion of its investigation and deliberation, ~~the~~ a special grand jury impanelled by the  
95 court on its own motion or on recommendation of a regular grand jury shall file a report of its findings  
96 with the court, including therein any recommendations that it may deem appropriate, after which it shall  
97 be discharged. Such report shall be sealed and not open to public inspection, other than by order of the  
98 court.

99 A majority, but not less than five, of the members of a special grand jury convened upon request of  
100 the attorney for the Commonwealth must concur in order to return a "true bill" of indictment. A "true  
101 bill" may be returned upon the testimony of, or evidence produced by, any witness who was called by  
102 the grand jury, upon evidence presented or sent to it.