

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 389

An Act to amend and reenact §§ 19.2-192, 19.2-215.1, 19.2-215.5, 19.2-215.6, and 19.2-215.9 of the Code of Virginia, relating to multi-jurisdiction grand juries.

[H 56]

Approved March 31, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-192, 19.2-215.1, 19.2-215.5, 19.2-215.6, and 19.2-215.9 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-192. Secrecy in grand jury proceedings.

Except as otherwise provided in this chapter, every *attorney for the Commonwealth, special counsel, sworn investigator, and member of a regular or special, or multi-jurisdiction grand jury* shall keep secret all proceedings which occurred during sessions of the grand jury; provided, however, in a prosecution for perjury of a witness examined before a regular grand jury, a regular grand juror may be required by the court to testify as to the testimony given by such witness before the regular grand jury.

§ 19.2-215.1. Functions of a multijurisdiction grand jury.

The functions of a multijurisdiction grand jury are:

1. To investigate any condition that involves or tends to promote criminal violations of:
 - a. Title 10.1 for which punishment as a felony is authorized;
 - b. § 13.1-520;
 - c. §§ 18.2-47 and 18.2-48;
 - d. §§ 18.2-111 and 18.2-112;
 - e. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2;
 - f. Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2;
 - g. Article 1 (§ 18.2-247 et seq.) and Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2;
 - h. Article 1 (§ 18.2-325 et seq.) and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or otherwise affecting gaming or gambling activity;
 - i. § 18.2-434, when violations occur before a multijurisdiction grand jury;
 - j. Article 2 (§ 18.2-438 et seq.) and Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2;
 - k. § 18.2-460 for which punishment as a felony is authorized;
 - l. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2;
 - m. Article 1 (§ 32.1-310 et seq.) of Chapter 9 of Title 32.1;
 - n. Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1;
 - o. Article 9 (§ 3.2-6570 et seq.) of Chapter 65 of Title 3.2;
 - p. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
 - q. Article 2.1 (§ 18.2-46.1 et seq.) and Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2;
 - r. Article 5 (§ 18.2-186 et seq.) and Article 6 (§ 18.2-191 et seq.) of Chapter 6 of Title 18.2;
 - s. Chapter 6.1 (§ 59.1-92.1 et seq.) of Title 59.1;
 - t. § 18.2-178 where the violation involves insurance fraud;
 - u. § 18.2-356;
 - v. Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2;
 - w. Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2;
 - x. Malicious felonious assault and malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;
 - y. Article 5 (§ 18.2-58 et seq.) of Chapter 4 of Title 18.2;
 - z. Felonious sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
 - aa. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;
 - bb. Chapter 13 (§ 18.2-512 et seq.) of Title 18.2; and
 - cc. Any other provision of law when such condition is discovered in the course of an investigation that a multijurisdiction grand jury is otherwise authorized to undertake and to investigate any condition that involves or tends to promote any attempt, solicitation or conspiracy to violate the laws enumerated in this section.
2. To report evidence of any criminal offense enumerated in subdivision 1 and for which a court reporter has recorded all oral testimony as provided by § 19.2-215.9 to the attorney for the Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or investigated ~~and, or to the chief law-enforcement officer of any jurisdiction where such offense could be prosecuted or investigated, or to a sworn investigator designated pursuant to § 19.2-215.6, or, when~~

appropriate, to the Attorney General.

3. To consider bills of indictment prepared by a special counsel to determine whether there is sufficient probable cause to return each such indictment as a "true bill." Only bills of indictment which allege an offense enumerated in subdivision 1 may be submitted to a multi-jurisdiction grand jury.

4. The provisions of this section shall not abrogate the authority of an attorney for the Commonwealth in a particular jurisdiction to determine the course of a prosecution in that jurisdiction.

§ 19.2-215.5. Subpoena power; counsel for witness; oath.

A multi-jurisdiction grand jury has statewide subpoena power and, *through special counsel*, may subpoena persons to appear before it to testify ~~or to produce~~ and may subpoena the production of evidence, *with or without the custodian of records at the election of special counsel*, in the form of specified records, papers, documents, or other tangible things. *Such subpoenas shall be returnable for a specific meeting of the multi-jurisdiction grand jury.* Mileage and such other reasonable expenses as are approved by the presiding judge shall be paid such persons from funds appropriated for such purpose.

A witness before a multi-jurisdiction grand jury shall be entitled to the presence of counsel in the grand jury room, but he may not participate in the proceedings.

The foreman shall administer the oath required by law for witnesses.

§ 19.2-215.6. Role and presence of special counsel; examination of witnesses; sworn investigators.

Special counsel may be present during the investigatory stage of a multi-jurisdiction grand jury proceeding and may examine any witness who is called to testify or produce evidence. The examination of a witness by special counsel shall in no way affect the right of any grand juror to examine the witness.

At the request of special counsel, the presiding judge shall designate specialized personnel for investigative purposes. Such personnel shall be designated as a sworn investigator and shall be administered an oath to maintain the secrecy of all proceedings of the multi-jurisdiction grand jury. A sworn investigator is permitted to discuss multi-jurisdiction grand jury proceedings with any other sworn investigator or special counsel and may participate in multi-jurisdiction grand jury proceedings at the request of special counsel or the grand jury. Any specialized personnel who have been administered an oath to maintain the secrecy of all proceedings of the multi-jurisdiction grand jury before July 1, 2014, and who continue to serve in that position are deemed to be sworn investigators under this section.

Special counsel *and sworn investigators*, however, may not be present at any time during the deliberations of a multi-jurisdiction grand jury except when the grand jury requests the legal advice of special counsel as to specific questions of law.

§ 19.2-215.9. Court reporter provided; safekeeping of transcripts, notes, etc.; when disclosure permitted; access to record of testimony and evidence.

A. A court reporter shall be provided for a multi-jurisdiction grand jury to record, manually or electronically, and transcribe all oral testimony taken before a multi-jurisdiction grand jury, but such a reporter shall not be present during any stage of its deliberations. Such transcription shall include the original or copies of all documents, reports, or other evidence presented to the multi-jurisdiction grand jury. The notes, tapes, and transcriptions of the reporter are for the use of the multi-jurisdiction grand jury, and the contents thereof shall not be used or divulged by anyone except as provided in this article. After the multi-jurisdiction grand jury has completed its use of the notes, tapes, and transcriptions, the foreman shall cause them to be delivered to the ~~presiding judge~~ *clerk of the circuit court in whose jurisdiction the multi-jurisdiction grand jury sits, with copies provided to special counsel.* Upon motion of special counsel, the presiding judge may order that such notes, tapes, and transcriptions be destroyed at the direction of special counsel by any means the presiding judge deems sufficient, provided that at least seven years have passed from the date of the multi-jurisdiction grand jury proceeding where such notes, tapes, and transcriptions were made.

B. The ~~presiding judge~~ clerk shall cause the notes, tapes, and transcriptions or other evidence to be kept safely. Upon motion to the presiding judge, special counsel shall be permitted to review any of the evidence which was presented to the multi-jurisdiction grand jury, and shall be permitted to make notes and to duplicate portions of the evidence as he deems necessary for use in a criminal investigation or proceeding. Special counsel shall maintain the secrecy of all information obtained from a review or duplication of the evidence presented to the multi-jurisdiction grand jury, except that this information may be disclosed pursuant to the provisions of subdivision 2 of § 19.2-215.1. Upon motion to the presiding judge by a person indicted by a multi-jurisdiction grand jury, similar permission to review, note, or duplicate evidence shall be extended if it appears that the permission is consistent with the ends of justice and is necessary to reasonably inform such person of the nature of the evidence to be presented against him, or to adequately prepare his defense.

C. If any witness who ~~voluntarily~~ testified or produced evidence before the multi-jurisdiction grand jury is prosecuted on the basis of his testimony or the evidence he produced, or if any witness ~~who was compelled to testify or to produce evidence~~ is prosecuted for perjury on the basis of his testimony or the evidence he produced before the multi-jurisdiction grand jury, the presiding judge, on motion of either

the Commonwealth special counsel or the defendant, shall permit both the Commonwealth and the defendant access to the testimony of or evidence produced by the defendant before the multi-jurisdiction grand jury. The testimony and the evidence produced by the defendant voluntarily before the multi-jurisdiction grand jury shall then be admissible in the trial of the criminal offense with which the defendant is charged; (i) to establish a charge of perjury in the Commonwealth's case-in-chief on the basis of his testimony before the multi-jurisdiction grand jury and (ii) for the purpose of impeaching the defendant in the trial of any other criminal matter, provided the testimony or evidence being used for impeachment was produced by the defendant voluntarily before the multi-jurisdiction grand jury.