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HOUSE BILL NO. 56

House Amendments in [] — January 23, 2014

A *BILL to amend and reenact §§ 19.2-192, 19.2-215.1, 19.2-215.3, 19.2-215.5, 19.2-215.6, 19.2-215.8, and 19.2-215.9 of the Code of Virginia, relating to multi-jurisdiction grand juries.*

Patron Prior to Engrossment—Delegate Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-192, 19.2-215.1, 19.2-215.3, 19.2-215.5, 19.2-215.6, 19.2-215.8, 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 witness, counsel for a witness, 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. [*Nothing in this section shall prevent a witness from disclosing information that the witness possessed prior to his appearance before the 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.

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59 2. To report evidence of any criminal offense enumerated in subdivision 1 and for which a court
60 reporter has recorded all oral testimony as provided by § 19.2-215.9 to the attorney for the
61 Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or
62 investigated, *to the chief law-enforcement officer of any jurisdiction where such offense could be*
63 *prosecuted or investigated, to a sworn investigator, and, when appropriate, to the Attorney General.*

64 3. To consider bills of indictment prepared by a special counsel to determine whether there is
65 sufficient probable cause to return each such indictment as a "true bill-" *and to issue reports at the*
66 *request of a special counsel when there is a finding made that there is insufficient probable cause to*
67 *return an indictment as a "true bill" for an offense enumerated in subdivision 1.* Only bills of indictment
68 which allege an offense enumerated in subdivision 1 may be submitted to a multijurisdiction grand jury.

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

71 **§ 19.2-215.3. When impaneled; impaneling order.**

72 Upon application by two or more attorneys for the Commonwealth, the Chief Justice of the Supreme
73 Court, or any justice designated by the Chief Justice, may within ~~twenty~~ 20 days thereafter order the
74 impaneling of a multi-jurisdiction grand jury for a term of ~~twelve~~ 12 months. The term of such a grand
75 jury may be extended for successive periods of not more than ~~six~~ 12 months by the Chief Justice, or by
76 any justice designated by the Chief Justice, upon the petition of a majority of the members of the grand
77 jury.

78 The impaneling order shall designate the jurisdiction requested on the application as the jurisdiction
79 where the multi-jurisdiction grand jury shall be convened and shall, unless all judges of that circuit have
80 recused themselves, appoint a judge of the circuit court of that jurisdiction as the presiding judge. The
81 impaneling order shall also designate special counsel and each special counsel who will assist the
82 multi-jurisdiction grand jury as listed in the application. The presiding judge shall substitute or appoint
83 additional special counsel upon motion of special counsel.

84 **§ 19.2-215.5. Subpoena power; counsel for witness; oath.**

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

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

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

94 **§ 19.2-215.6. Role and presence of special counsel; examination of witnesses; sworn**
95 **investigators.**

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

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

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

112 **§ 19.2-215.8. Returning a "true bill" of indictment or report; jurisdiction to be set out.**

113 In order to return a "true bill" of indictment *or a report*, a majority, but in no instance less than five,
114 of the multi-jurisdiction grand jurors must concur in that finding. A multi-jurisdiction grand jury may
115 return a "true bill" of indictment *or a report* upon the testimony of, or evidence produced by, any
116 witness who was called by the grand jury, upon evidence presented to it by special counsel, or upon
117 evidence sent to it by the presiding judge.

118 Every "true bill" of indictment returned by a multi-jurisdiction grand jury shall state in which
119 jurisdiction or jurisdictions the offense is alleged to have occurred. Thereafter, when venue is proper in
120 more than one jurisdiction, the presiding judge who directed the grand jury proceeding shall elect in

which one of the jurisdictions named in the indictment the indictment is to be prosecuted.

§ 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~~ *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 *special counsel or* 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.*

D. If the multi-jurisdiction grand jury issues a report at the request of special counsel based on a finding that there is insufficient probable cause to return an indictment as a "true bill" for an offense enumerated in this article, the presiding judge, upon motion of special counsel, may release and make public the multi-jurisdiction grand jury's report.

E. A witness before the multi-jurisdiction grand jury may file a motion to release and make public the witness's testimony before the multi-jurisdiction grand jury. The presiding judge shall receive evidence in camera on the witness's motion from the witness and the attorney for the Commonwealth or special counsel. The presiding judge may release and make public the witness's testimony upon good cause shown.