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HOUSE BILL NO. 2413

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact § 19.2-215.9 of the Code of Virginia, relating to multi-jurisdiction grand jury; secrecy of information.*

Patron—Adams, L.R.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-215.9 of the Code of Virginia is amended and reenacted as follows:

§ 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 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 clerk shall cause the notes, tapes, and transcriptions or other evidence to be kept safely. Upon motion to the presiding judge, special counsel or the attorney for the Commonwealth or United States attorney of any jurisdiction where the offense could be prosecuted or investigated 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, the attorney for the Commonwealth, or the United States attorney 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. A United States attorney satisfies his duty to maintain secrecy of information obtained from a review or duplication of evidence presented to the multi-jurisdiction grand jury if such information is maintained in accordance with the Federal Rules of Criminal Procedure. *After a person has been indicted by a grand jury, the attorney for the Commonwealth shall notify such person that the multi-jurisdiction grand jury was used to obtain evidence for a prosecution.* Upon motion to the presiding judge by a person indicted by a multi-jurisdiction grand jury or by a person being prosecuted with evidence presented to a multi-jurisdiction grand jury, similar permission to review, note, or duplicate evidence shall be extended.

Any person granted permission to make notes and to duplicate portions of the evidence given before the multi-jurisdiction grand jury shall maintain the secrecy of all information obtained from a review or duplication of the evidence presented to the multi-jurisdiction grand jury. The timing of the access to such evidence shall be determined by the presiding judge after a hearing on the matter, if the parties do not otherwise agree. Any person granted permission herein is precluded from making additional copies of these materials without permission of the presiding judge and is to notify the presiding judge and the attorney for the Commonwealth immediately if these materials are lost or their secrecy has not been maintained.

C. If any witness who 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 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 special counsel or the defendant, shall permit 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 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

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59 testimony before the multi-jurisdiction grand jury and (ii) for the purpose of impeaching the defendant
60 in the trial of any other criminal matter, provided the testimony or evidence being used for impeachment
61 was produced by the defendant voluntarily before the multi-jurisdiction grand jury.