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## SENATE BILL NO. 1002

Offered January 17, 1997

*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.*

Patrons—Stolle, Earley, Edwards, Howell, Norment, Quayle, Saslaw and Williams; Delegates: Bryant, Drake, Dudley, Katzen, McClure, Purkey, Ruff and Wardrup

Referred to the Committee for Courts of Justice

**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 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 which 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.

*A witness who has been called to testify or produce evidence before a grand jury requested by the attorney for the Commonwealth, and who refuses to testify or produce evidence by expressly invoking his right not to incriminate himself, may be compelled to testify or produce evidence by the presiding judge. A witness who refuses to testify or produce evidence 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. When a witness is compelled to testify or produce evidence 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,*

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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  
63 consents to such interrogation. *When the special grand jury was impanelled upon his request, he may*  
64 *examine any witness called to testify or produce evidence, but his examination of a witness shall in no*  
65 *way affect 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 § 19.2-213. Report by special grand jury; return of true bill.

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

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