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HOUSE BILL NO. 499

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 19.2-203 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-202.1, relating to regular grand jury; provisions for court reporter; use and disposition of notes, tapes, and transcriptions.

Patron—Mullin

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 19.2- 203 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-202.1 as follows:

§ 19.2-202.1. Provision for court reporter; use and disposition of notes, tapes, and transcriptions.

A. A court reporter shall be provided for a regular grand jury to record, manually or electronically, and transcribe all oral testimony taken before a regular grand jury, but such 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 regular grand jury. The contents of the notes, tapes, and transcriptions of the reporter shall not be divulged by anyone except as hereinafter provided. The foreman shall cause the notes, tapes, and transcriptions of the court reporter to be sealed, the container dated, and the container delivered to the court. The court shall cause the sealed container to be kept safely and may authorize disclosure, at a time, in a manner, and subject to conditions as it directs as follows:

1. Preliminarily to or in connection with a judicial proceeding;

2. On motion of the defendant upon showing that grounds exist to dismiss the indictment because of a matter that occurred before the grand jury;

3. On motion of the attorney for the Commonwealth, if disclosure is sought by a foreign court or prosecutor for use in an official criminal investigation;

4. On motion of the attorney for the Commonwealth upon showing that the matter may disclose a violation of state or federal criminal law, as long as the disclosure of the contents of the notes, tapes, and transcriptions is to an appropriate government official for the purpose of enforcing that law; or

5. On motion of any individual when the court finds by a preponderance of the evidence that there is good cause for disclosure.

B. Good cause exists for disclosure of grand jury proceedings pursuant to subdivision A 5 where the moving party demonstrates a particularized need for the material sought. A particularized need exists where the material is necessary to avoid a possible injustice in another proceeding or when the interest of the public or any individual in disclosure substantially outweighs the continued need for secrecy of the regular grand jury proceedings. The burden of establishing good cause rests upon the party moving for disclosure. In determining good cause, the court may consider the following factors: (i) the identity of the party seeking disclosure; (ii) whether the defendant or the attorney for the Commonwealth opposes the disclosure; (iii) what specific information is being sought; (iv) the reason disclosure is sought and the interests affected, such as whether they are individual or public interests, or liberty or property interests; (v) how long ago the regular grand jury proceedings took place; (vi) the current status of the principals of the grand jury proceedings and that of their families; (vii) the extent to which the desired material, either permissibly or impermissibly, has been previously made public; (viii) whether witnesses to the grand jury proceedings who might be affected by disclosure are still alive, and if they are, whether and to the extent to which they may be prejudiced; and (ix) the need for maintaining secrecy in the particular case in question.

C. Any motion to disclose the contents of the notes, tapes, and transcriptions of a regular grand jury proceeding under this section shall be filed in the circuit court in which the grand jury sits. The moving party shall serve the petition on and the court shall afford a reasonable opportunity to appear and be heard to (i) an attorney for the Commonwealth, (ii) the parties to the judicial proceeding, and (iii) any other person whom the court may designate.

D. If the motion to disclose arises out of a judicial proceeding in a circuit court in a jurisdiction other than the one in which the regular grand jury sits, the circuit court may transfer the motion to such other court if it cannot reasonably determine whether disclosure is proper. If the court decides to transfer such motion, it shall send to the court to which the matter is being transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued secrecy. The court

59 to which the matter is transferred shall afford those persons identified in subsection C a reasonable
60 opportunity to appear and be heard.

61 E. If the motion to disclose arises out of a judicial proceeding in another state or federal
62 jurisdiction, the moving party shall obtain a certificate of need from the other state or federal court
63 confirming that the moving party has sworn under penalty of perjury that good cause pursuant to
64 subsection B exists for disclosure of the material.

65 F. If any witness who testified or produced evidence before the regular grand jury is prosecuted on
66 the basis of his testimony or the evidence he produced, or if any witness is prosecuted for perjury on
67 the basis of his testimony or the evidence he produced before the regular grand jury, the presiding
68 judge, on motion of either the attorney for the Commonwealth or the defendant, shall permit the
69 defendant access to the testimony of or evidence produced by the defendant before the regular grand
70 jury. The testimony and the evidence produced by the defendant before the regular grand jury shall then
71 be admissible in the trial of the criminal offense with which the defendant is charged (i) to establish a
72 charge of perjury in the Commonwealth's case-in-chief on the basis of his testimony before the regular
73 grand jury and (ii) for the purpose of impeaching the defendant in the trial of any other criminal
74 matter, provided that the testimony or evidence being used for impeachment was produced by the
75 defendant voluntarily before the regular grand jury.

76 G. If no motion to disclose the sealed notes, tapes, and transcriptions of a regular grand jury
77 proceeding is made within seven years from the date of a regular grand jury proceeding where such
78 notes, tapes, and transcriptions were made, the court shall cause such sealed notes, tapes, and
79 transcriptions to be destroyed. However, on motion of the attorney for the Commonwealth or the
80 defendant, the court may extend the time period for destruction.

81 **§ 19.2-203. Indictments ignored may be sent to another grand jury; what irregularities not to**
82 **vitate indictment, etc.**

83 Although a bill of indictment ~~be~~ is returned as not a true bill, the same or another bill of indictment
84 against the same person for the same offense may be sent to, and acted on, by the same or another
85 grand jury. No irregularity in the time or manner of selecting the jurors, or in the writ of venire facias,
86 or in the manner of executing the same, shall vitiate any presentment, indictment, or finding of a grand
87 jury. If a bill of indictment is returned as not a true bill, or if a district court finds no probable cause
88 to certify the conduct alleged to the grand jury, then any grand jury subsequently considering the bill of
89 indictment shall be informed of the outcome of those prior proceedings.