WEST VIRGINIA CODE CHAPTER 52 ARTICLE 2

WV Legislature

§52-2-1. At what terms grand jury shall attend; when court or judge may dispense with it.

There shall be a grand jury at each term of a circuit court, except that the circuit court of any county by an order entered of record, or the judge thereof in vacation by written order to the clerk at least twenty days before the term, may dispense with the grand jury for one or two of the terms required by law to be held in such county annually, and the circuit court of any county in which there may be a criminal court whose jurisdiction includes the trial of felony cases, by an order entered of record, may dispense with the grand jury for all the terms of such circuit court required by law to be held in such county annually; and in such case no grand jury shall be drawn by the court or by the judge in vacation. Any circuit court may, at a special, regular or adjourned term thereof, whenever it shall be proper to do so, order a grand jury to be drawn and to attend such term. A grand jury summoned to attend a special, regular or adjourned term may consider any offense against the laws, whether the same shall have been committed before the next preceding term of the court or not, and whether the accused shall have been held for trial or not prior to the next preceding regular term.

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§52-2-2. Provisions governing petit juries govern grand juries.

The provisions of article one of this chapter relating to petit juries, so far as applicable and not inconsistent with the provisions of this article, shall be observed and govern grand juries.

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§52-2-3. Selection and summoning of jurors.

The clerk of any circuit court requiring a grand jury shall, at least 30 days before the term of court, draw and assign persons for the grand jury, but the court, or judge thereof, may require the clerk at any specified time to draw and assign grand jurors for either a regular, special, or adjourned term of court. When required by the circuit court or the chief judge thereof, the clerk shall draw the names of 16 persons from the jury wheel and the persons so drawn shall constitute the grand jury. At the same time, the clerk shall draw the names of such additional numbers of persons from the jury wheel as the chief judge of the circuit, or the judge in a single judge circuit shall by prior order direct, and the persons so drawn shall constitute alternate jurors for the grand jury. The judge may replace any absent members of the grand jury from among the alternate grand jurors, in the order in which the alternate jurors were drawn. The clerk shall enter the names of all persons so drawn in a book kept for that purpose and shall issue summonses to the persons drawn in the same manner as that provided for petit jurors in §52-1-7(b) of this code.

WV Legislature

§52-2-4. Quorum.

Of the sixteen grand jurors chosen from the grand jurors and alternate grand jurors summoned, fifteen or more of the grand jurors attending shall be a competent grand jury.

WV Legislature

§52-2-5. Oath.

From among the persons so summoned, who attend, the court shall select a foreman, who shall be sworn as follows: "You shall diligently inquire and true presentment make of all such matters as may be given you in charge or come to your knowledge touching the present service. You shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor, partiality or affection, but in all your presentments you shall present the truth, the whole truth and nothing but the truth. So help you God." The other grand jurors shall afterwards be sworn as follows: "The same oath that your foreman has taken on his part, you and each of you shall observe and keep on your part. So help you God."

WV Legislature

§52-2-6. Charge.

The grand jurors, after being sworn, shall be charged by the judge, and shall then be sent to their room.

WV Legislature

§52-2-7. Duties; preservation of evidence.

The grand jury shall inquire of and present all felonies, misdemeanors and violations of penal laws, committed in the jurisdiction of the court wherein they are sworn, except that no presentment shall be made of a matter for which there is no imprisonment, but only a fine, where the fine is limited to an amount not exceeding $10 and the offense is cognizable by a justice of the peace. They shall appoint one of their number as clerk, who shall write down the name of each witness examined by them, and the substance of the evidence given by him and furnish the same to the prosecuting attorney.

WV Legislature

§52-2-8. Finding or making of indictment or presentment.

At least twelve of the grand jurors must concur in finding or making an indictment or presentment. They may make a presentment or find an indictment upon the information of two or more of their own body, and when a presentment or indictment is so made, or on the testimony of witnesses called on by the grand jury, or sent to it by the court, the names of the grand jurors giving the information, or of the witnesses, shall be written at the foot of the presentment or indictment.

WV Legislature

§52-2-9. Second hearing.

Although a bill of indictment be returned not a true bill, another bill of indictment against the same person for the same offense may be sent to and acted on by the same or another grand jury.

WV Legislature

§52-2-10. Substituting new juror to fill vacancy; summoning additional juror.

If the foreman or any grand juror be unable or fail to attend after being sworn, another may be sworn in his stead. And when one grand juror has been discharged, another may, by order of the court, be summoned to attend at the same term.

WV Legislature

§52-2-11. Materials subpoenaed by grand jury; authorizing custodian possession and use thereof.

(a) For purposes of this section:

(1) "Prosecuting attorney" means a prosecuting attorney, assistant prosecuting attorney or duly appointed special prosecuting attorney.

(2) "Investigator" means an investigator employed by a prosecuting attorney's office or an employee of a state agency authorized by the provisions of this code to perform criminal investigations. For purposes of this definition, state agency shall include a legislative committee, commission or entity authorized by the provisions of this code to perform criminal investigations.

(3) "Law-enforcement officer" shall have the same meaning as is set forth in section one, article twenty-nine, chapter thirty of this code: Provided, That for purposes of this section, "law-enforcement officer" shall also include those individuals meeting the definition of "chief executive" set forth in section one, article twenty-nine, chapter thirty of this code.

(4) "Subpoenaed material" means books, records, documents, papers, computers, laptops, computer hard drives, electronic records, including, but not limited to, emails, electronic files, electronic documents, metadata or any other thing in any form in which it may exist.

(b) Notwithstanding any provision of this code to the contrary, material subpoenaed and received by a prosecuting attorney pursuant to a grand jury subpoena may thereafter, in the discretion of the prosecuting attorney, be delivered to a designated law-enforcement officer or investigator. Upon receipt from the prosecuting attorney, the designated law-enforcement officer or investigator may keep, review and analyze the subpoenaed materials and otherwise use the subpoenaed materials for investigative purposes.

(c) Prior to providing subpoenaed material to a designated law-enforcement officer or investigator, as authorized by subsection (b) of this section, the prosecuting attorney shall prepare and have the designated law-enforcement officer or investigator execute a nondisclosure statement acknowledging the existence and content of the subpoenaed material is secret under Rule 6(e) of the West Virginia Rules of Criminal Procedure. The prosecuting attorney shall file all nondisclosure statements, under seal, with the clerk of the circuit court. The existence or contents of any subpoenaed material subject to the provisions of this section may only be disclosed to another law-enforcement officer or investigator for investigative purposes with the prior written authorization of the prosecuting attorney and the receiving law-enforcement officer's or investigator's execution of a nondisclosure statement.

(d) The designated law-enforcement officer or investigator, as authorized by subsection (b) of this section, may, in the discretion of the prosecuting attorney, retain the subpoenaed material or other evidence in his or her possession, care, custody or control until the

WV Legislature

termination of the investigation or presentation of the subpoenaed matter to the grand jury.

WV Legislature

§52-2-12. Incompetency or disqualification of juror not to affect validity of finding.

No presentment or indictment shall be quashed or abated on account of the incompetency or disqualification of any one or more of the grand jurors who found the same.

WV Legislature

§52-2-13. Compensation and mileage of grand jurors.

A grand juror shall be paid mileage, at the rate set by the commissioner of finance and administration for state employees, for travel expenses incurred in traveling from the grand juror's residence to the place of the holding of the grand jury and return, and shall be reimbursed for other expenses incurred as a result of required attendance at sessions of the grand jury at a rate of between $15 and $40, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance.

WV Legislature

§52-2-14. Grand jury authorized to sit for as long as one year and in addition to any other grand jury; provisions of article applicable with certain exception.

Whenever it appears to the judge of any court of record having criminal jurisdiction that there may be possible offenses against the criminal laws of this state which because of their complexity and involvement may require a grand jury to sit for an extended period of time, he may, pursuant to the provisions of this section, order a grand jury to be drawn and to attend any special, regular or adjourned term of such court in addition to any other grand jury attending any such term of court and all of the provisions of this article shall apply, except as follows:

(1) Such grand jury shall sit for one year unless an order for its discharge be earlier entered upon a determination by such grand jury, by majority vote, that its business has been completed, and such grand jury shall have the power to make presentments or find indictments at any time while it is sitting, notwithstanding the end of the term of court during which it was drawn and summoned;

(2) The term limitation specified in the last sentence of section ten of this article shall not apply to a grand jury attending pursuant to the provisions of this section fourteen; and

(3) Notwithstanding the first two sentences of section thirteen of this article, every person who shall serve upon a grand jury attending pursuant to the provisions of this section fourteen shall be entitled to receive for such services not less than $8 nor more than $20, to be fixed by the court, for each day he may so serve, for a total period not in excess of one year, and in addition thereto the same mileage as allowed to witnesses, to be paid out of the county treasury.

WV Legislature

§52-2-15. Secrecy of Grand Jury Proceedings.

(a) A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the state, or any person to whom disclosure is made under paragraph (B), subdivision (1), subsection(c) of this section, shall not disclose matters occurring before the grand jury, except as otherwise provided by subsection (c) of this section, and rules promulgated by the Supreme Court of Appeals.

(b) A person who knowingly violates subsection (a)of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000 or confined in jail not more than thirty days, or both fined and confined.

(c) (1) Disclosure otherwise prohibited by this section of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to:

(A) An attorney for the state for use in the performance of such attorney's duty; and

(B) Such official personnel as are deemed necessary by an attorney for the state to assist an attorney for the state in the performance of such attorney's duty to enforce criminal law.

(2) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may also be made:

(A) when so directed by a court preliminarily to or in connection with a judicial proceeding;

(B) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(C) when the disclosure is made by an attorney for the state to another grand jury; or

(D) when permitted by a court at the request of an attorney for the state, upon a showing that such matters may disclose a violation of federal criminal law or of the law of another state, to an appropriate official of the federal government or of such other state for the purposes of enforcing such law.

WV Legislature

§52-2-16. Juror questionnaires; judicial approval required for release of forms.

Completed juror questionnaire forms for persons called for or serving as grand jurors are confidential and may only be released from the custody of the clerk with the written permission of the circuit court.

WV Legislature