

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 247

BY SENATORS TRUMP, CARMICHAEL (MR. PRESIDENT),

HALL, PALUMBO, WOELFEL AND BLAIR

[Originating in the Committee on the Judiciary;

reported on February 15, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §52-2-11, relating generally to grand juries; authorizing prosecuting attorneys
3 to designate law-enforcement officers and investigators to receive evidence subpoenaed
4 and received by a prosecuting attorney under the authority of a grand jury and to serve as
5 custodians thereof; authorizing designated custodians to use subpoenaed material for
6 legitimate investigative purposes; requiring custodians to preserve grand jury
7 confidentiality and to execute nondisclosure statements to affirm same; authorizing
8 designated custodian to share subpoenaed material with other law-enforcement officers
9 and agencies under limited circumstances; limiting law-enforcement use of such
10 subpoenaed material to legitimate investigative purposes; allowing designated custodians
11 to retain subpoenaed material until conclusion of investigation or prosecution; and defining
12 terms.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §52-2-11, to read as follows:

ARTICLE 2. GRAND JURIES.

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

1 (a) For purposes of this section:

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

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

8 (3) "Law-enforcement officer" shall have the same meaning as is set forth in section one,

9 article twenty-nine, chapter thirty of this code: *Provided*, That for purposes of this section, “law-
10 enforcement officer” shall also include those individuals meeting the definition of “chief executive”
11 set forth in section one, article twenty-nine, chapter thirty of this code.

12 (4) “Legitimate investigative purposes” means the investigation of potential criminal
13 conduct underlying the issuance of the subpoena or the investigation of evidence of potential
14 criminal conduct which is found in the subpoenaed material the investigation of which is approved
15 in writing by the prosecuting attorney prior to such investigation being undertaken.

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

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

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

35 enforcement officer's or investigator's execution of a nondisclosure statement.

36 (d) A prosecuting attorney may, in his or her discretion, designate a successor, law-
37 enforcement officer or investigator as custodian.

38 (e) The designated law-enforcement officer or investigator, as authorized by subsection
39 (a) of this section, may, in the discretion of the prosecuting attorney, retain the subpoenaed
40 material or other evidence in his or her possession, care, custody or control until the termination
41 of the investigation or presentation of the subpoenaed matter to the grand jury.