

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 247

BY SENATORS TRUMP, CARMICHAEL (MR. PRESIDENT),

HALL, PALUMBO, WOELFEL AND BLAIR

[Introduced February 10, 2017; referred
to the Committee on the Judiciary]

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 to grand juries generally; 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; authorizing
 5 designated custodians to use subpoenaed records, documents and other evidence for
 6 investigative purposes; requiring custodians execute disclosure statements to preserve
 7 grand jury secrecy; authorizing custodian to share subpoenaed materials with other law-
 8 enforcement officers and agencies; limiting law-enforcement use of such subpoenaed
 9 materials to legitimate investigative and prosecutorial purposes relevant to investigation
 10 underlying the issuance of subpoena; allowing custodians to retain subpoenaed material
 11 until conclusion of investigation or prosecution; and defining 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" means the same as this term is defined in section one, article
 9 twenty-nine, chapter thirty of this code, except for purposes of this section, "law-enforcement

10 officer” shall additionally include those individuals defined as “chief executive” in section one,
11 article twenty-nine, chapter thirty of this code.

12 (b) Notwithstanding any provision of this code to the contrary, records, items or other
13 evidence subpoenaed and received by a prosecuting attorney under the authority of a grand jury
14 may thereafter, in the discretion of the prosecuting attorney, be permitted to be delivered to a
15 designated law-enforcement officer or investigator. Upon receipt from the prosecuting attorney,
16 the law-enforcement officer or investigator may keep, review and analyze the records and
17 otherwise use the subpoenaed materials for legitimate investigative purposes.

18 (c) Prior to providing a subpoenaed record, item or other evidence to a designated law-
19 enforcement officer or investigator, as authorized by subsection (a) of this section, the prosecuting
20 attorney shall prepare and have the law-enforcement officer or investigator execute a disclosure
21 statement acknowledging that the record, item or other evidence is secret under Rule 6(e) of the
22 West Virginia Rules of Criminal Procedure. The prosecuting attorney shall file all disclosure
23 statements, under seal, with the clerk of the circuit court. The existence or contents of any record,
24 item or other evidence subject to the provisions of this section may be disclosed to another law-
25 enforcement officer or investigator for legitimate investigative purposes with the written
26 authorization of the prosecuting attorney and that officer’s or investigator’s execution of a
27 disclosure statement.

28 (d) The designated law-enforcement officer or investigator, as authorized by subsection
29 (a) of this section, may, in the discretion of the prosecuting attorney, retain the record, item or
30 other evidence in his or her possession, care, custody or control until the termination of the
31 investigation or prosecution of the matter.

NOTE: The purpose of this bill is to authorize a prosecuting attorney to designate and deliver grand jury records to law-enforcement officers or investigators for investigative purposes.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.