

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2603

Session of
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INTRODUCED BY RHODES, SCIRICA, IRVIS, SELTZER, BERSON, SPENCER,
RYAN, BROWN, COHEN, DeWEESE, DUMAS, LEVIN, PRATT, OLIVER,
RICHARDSON, WHITE, WILLIAMS, FISHER, GREENLEAF, HASKELL,
W. D. HUTCHINSON, MILLER, MOEHLMANN, WAGNER, BENNETT, BURNS,
CALTAGIRONE, COWELL, DAVIES, DORR, FEE, FISCHER, FREIND,
GALLAGHER, GLEESON, GRIECO, HARPER, D. S. HAYES, HOFFEL,
KERNICK, McCLATCHY, MADIGAN, MEBUS, MELUSKEY, O'KEEFE, PYLES,
QUEST, REED, L. E. SMITH, STAPLETON, SWEET, TENAGLIO,
WEIDNER AND WISE, JUNE 21, 1978

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 21, 1978

AN ACT

1 Providing for investigative grand juries.

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7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the
11 "Investigative Grand Jury Act."

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall
14 have, unless the context clearly indicates otherwise, the
15 meanings given to them in this section:

16 "Attorney for the Commonwealth." The district attorney of
17 the county in which a county investigative grand jury is
18 summoned, or his designee, or the Attorney General or his
19 designee if the Attorney General has superseded the district
20 attorney; the Attorney General, or his designee, with respect to
21 multi-county investigative grand juries.

22 "Investigative grand jury." The county investigative grand
23 jury or the multi-county investigative grand jury or both.

24 "Investigative grand jury report." A report submitted by the
25 investigative grand jury to the supervising judge regarding
26 conditions relating to organized crime or public corruption or
27 both; or proposing recommendations for legislative, executive,
28 or administrative action in the public interest based upon
29 stated findings.

30 "Investigative resources of the grand jury." The power to

1 compel the attendance of investigative witnesses; the power to
2 compel the testimony of investigative witnesses under oath; the
3 power to take investigative testimony from witnesses who have
4 been granted immunity; the power to require the production of
5 documents, records and other evidence; the power to obtain the
6 initiation of civil and criminal contempt proceedings; and every
7 investigative power of any grand jury of the Commonwealth.

8 "Multi-county investigative grand jury." A Statewide or
9 regional investigative grand jury convened by a justice of the
10 Supreme Court upon the application of the Attorney General and
11 having jurisdiction to inquire into organized crime or political
12 corruption or both under circumstances wherein more than one
13 county is named in the order convening said investigative grand
14 jury.

15 "Organized crime." The unlawful activity of an association
16 trafficking in illegal goods or services, including but not
17 limited to gambling, prostitution, loan sharking, narcotics,
18 labor racketeering, or other unlawful activities; or any
19 continuing criminal conspiracy or other unlawful practice which
20 has as its objective:

- 21 (i) large economic gain through fraudulent practices; or
22 (ii) improper governmental influence.

23 "Public corruption." The unlawful activity under color of or
24 in connection with any public office or employment of:

- 25 (i) any public official or public employee, or the agent
26 of any public official or public employee under color of or
27 in connection with any public office or employment; or
28 (ii) any candidate for public office or the agent of any
29 candidate for public office.

30 "Supervising judge." The common pleas judge designated by

1 the president judge to supervise the activities of the county
2 investigative grand jury, or the common pleas judge designated
3 by a justice of the Supreme Court to supervise the activities of
4 the multi-county investigative grand jury.

5 Section 3. Convening the county investigative grand jury.

6 (a) In addition to such other grand juries as are called
7 from time to time, county investigative grand juries shall be
8 summoned as provided in subsection (b).

9 (b) Application may be made to the president judge of the
10 court of common pleas of any county by the district attorney of
11 such county for an order directing that a county investigative
12 grand jury be summoned, stating in such application that the
13 convening of a county investigative grand jury is necessary
14 because of the existence of criminal activity within the county
15 which can best be investigated using the investigative resources
16 of the grand jury. Within ten days of receipt of such
17 application, the president judge shall issue an order granting
18 the request. The order shall specify which judge of the court is
19 to be the supervising judge of the county investigative grand
20 jury. Refusal to grant an application under this subsection
21 shall be appealable to the Chief Justice of the Supreme Court or
22 such justice of the Supreme Court who is designated by rule to
23 hear such appeals.

24 (c) In the absence of an order under subsection (b), the
25 president judge of the court of common pleas upon his own motion
26 may issue an order directing that a county investigative grand
27 jury be summoned: Provided, however, That the summoning of such
28 grand jury may, in the discretion of the court, be stayed if the
29 district attorney of the county and the Attorney General both
30 certify to the court that, in their judgments, the summoning of

1 such grand jury is not necessary at such time.

2 (d) The county investigative grand jury shall be impaneled
3 in the manner provided by law.

4 Section 4. Convening the multi-county investigative grand jury.

5 (a) Application for a multi-county investigative grand jury
6 may be made by the Attorney General to the Chief Justice of the
7 Supreme Court or to such justice of the Supreme Court who is
8 designated by rule to receive such application. In such
9 application the Attorney General shall state that, in his
10 judgment, the convening of a multi-county investigative grand
11 jury is necessary because of organized crime or political
12 corruption or both involving more than one county of the
13 Commonwealth, and that, in his judgment, the investigation
14 cannot be adequately performed by an investigative grand jury
15 available under section 3. The application shall specify for
16 which counties the multi-county investigative grand jury is to
17 be convened. Within ten days of receipt of such application, the
18 justice shall issue an order granting the same. Failure to grant
19 such application shall be appealable to the Supreme Court.

20 (b) An order issued under subsection (a) shall:

21 (1) convene a multi-county investigative grand jury
22 having jurisdiction over all counties requested in the
23 application by the Attorney General;

24 (2) designate a judge of a court of common pleas to be
25 the supervising judge over such multi-county investigative
26 grand jury and provide that such judge shall with respect to
27 investigations, indictments and reports of said investigative
28 multi-county grand jury, have jurisdiction over all counties
29 in the jurisdiction of said multi-county investigative grand
30 jury;

1 (3) designate the counties which shall supply jurors and
2 in what ratios;

3 (4) designate a location or locations for the multi-
4 county investigative grand jury proceeding; and

5 (5) provide for such other incidental arrangements as
6 may be necessary including the Commonwealth's share of costs.

7 All matters to be included in such order shall be determined by
8 the justice issuing the order in any manner which he deems
9 appropriate, except that the Supreme Court may adopt rules,
10 consistent with the provisions of this section, establishing
11 standard procedures for the convening of multi-county
12 investigative grand juries.

13 (c) The multi-county investigative grand jury shall be
14 impaneled in the manner provided by law.

15 (d) The impaneling of a multi-county investigating grand
16 jury shall in no way diminish the responsibility and the
17 authority of the district attorneys within its jurisdiction to
18 investigate and prosecute organized crime or public corruption
19 or both.

20 Section 5. Composition of the investigative grand jury.

21 (a) Each investigative grand jury shall be composed
22 initially of 23 members and seven alternates. Subsequent
23 vacancies shall be filled by substituting alternates for the
24 members who are excused or otherwise unable to continue their
25 service.

26 (b) Fifteen members shall constitute a quorum and may
27 conduct business for the investigative grand jury but a majority
28 of the full investigative grand jury shall be required to adopt
29 a report or present an indictment.

30 (c) The supervising judge shall appoint a foreman from among

1 the members of the investigative grand jury. The members of the
2 investigative grand jury shall then elect a secretary.

3 Section 6. Term of investigative grand jury.

4 (a) No investigative grand jury shall be limited in duration
5 to the term of court. Each such investigative grand jury shall,
6 except as provided in subsections (b) and (c), serve for a term
7 of 18 months, unless an order for discharge shall be entered
8 earlier by the court upon the determination of such
9 investigative grand jury, by majority vote, that its business
10 has been completed.

11 (b) If, at the end of its original term or any extension
12 thereof, any investigative grand jury determines by majority
13 vote that it has not completed its business, it may request the
14 court to extend its term for an additional period of six months:
15 Provided, however, That no such investigative grand jury term
16 shall exceed 24 months from the time it was originally summoned.
17 The court shall issue an order granting a request for extension
18 unless it determines that such request is clearly without basis.
19 Failure to grant an extension of term under this subsection may,
20 upon affirmative majority vote of such grand jury, be appealed
21 to the Chief Justice of the Supreme Court or such justice of the
22 Supreme Court who is designated by rule to hear such appeals.
23 Where an appeal is taken, the grand jury shall continue to
24 exercise its powers pending the disposition thereof.

25 (c) If, at any time within the original term of any
26 investigative grand jury or any extension thereof, the court
27 determines that there is clearly no basis for the further
28 existence of any investigative grand jury, the court may order
29 that such grand jury be discharged. An order of discharge under
30 this subsection shall not become effective less than ten days

1 after the date on which it is issued, and may, upon affirmative
2 majority vote of such grand jury, be appealed to the Chief
3 Justice of the Supreme Court or such justice of the Supreme
4 Court who is designated by rule to hear such appeals. When an
5 appeal is taken, the grand jury shall continue to exercise its
6 powers pending the disposition thereof.

7 (d) Whenever the attorney for the Commonwealth determines
8 that the volume of work of an investigative grand jury exceeds
9 the capacity of the investigative grand jury to discharge its
10 obligations, they may make application to the court to impanel
11 additional investigative grand juries under the provisions of
12 sections 3 and 4 of this act.

13 Section 7. Powers of the investigative grand jury.

14 (a) The investigative grand jury shall have the power to
15 inquire into offenses against the criminal laws of the
16 Commonwealth alleged to have been committed within the county or
17 counties in which it is summoned. Such power shall include the
18 investigative resources of the grand jury which shall include
19 but not be limited to the power of subpoena, the power to obtain
20 the initiation of civil and criminal contempt proceedings, and
21 every investigative power of any grand jury of the Commonwealth.
22 Such alleged offenses may be brought to the attention of such
23 grand jury by the court or by the attorney for the Commonwealth,
24 but in no case shall the investigating grand jury inquire into
25 alleged offenses on its own motion.

26 (b) The investigative grand jury shall have the power to
27 indict any person who appears to have committed within the
28 county or counties in which such investigative grand jury is
29 summoned an offense against the criminal laws of the
30 Commonwealth. The power of an investigative grand jury to indict

1 shall be exercised in the same manner, and upon the same
2 standards and evidence, as in the case of other grand juries
3 except as modified by section 10. An indictment by an
4 investigative grand jury shall constitute the commencement of
5 criminal proceedings against the defendant named therein; and
6 the proceedings prior and subsequent to such indictment shall
7 not include a complaint, preliminary hearing, information or
8 presentment to another grand jury.

9 (c) The investigative grand jury shall have every power
10 available to any other grand jury in the Commonwealth. The
11 jurisdiction, powers and activities of an investigative grand
12 jury shall not, if otherwise lawful, be limited in any way by
13 the charge of the court.

14 Section 8. Investigative grand jury proceedings.

15 (a) Any document produced before an investigative grand jury
16 may be copied or reproduced. Each statement, question, comment
17 or response of the supervising judge, the attorney for the
18 Commonwealth, any witness, any grand juror or any other person
19 which is made in the presence of the investigative grand jury
20 shall be court order be stenographically recorded or transcribed
21 or both.

22 (b) Disclosure of matters occurring before the grand jury
23 other than its deliberations and the vote of any juror may be
24 made to the attorneys for the Commonwealth for use in the
25 performance of their duties. The attorneys for the Commonwealth
26 may with the approval of the supervising judge disclose matters
27 occurring before investigating grand jury including transcripts
28 of testimony to local, State, other state or Federal law
29 enforcement or investigating agencies to assist them in
30 investigating crimes under their investigative jurisdiction.

1 Otherwise a juror, attorney, interpreter, stenographer, operator
2 of a recording device, or any typist who transcribes recorded
3 testimony may disclose matters occurring before the grand jury
4 only when so directed by the court. All such persons shall be
5 sworn to secrecy, and shall be in contempt of court if they
6 reveal any information which they are sworn to keep secret.

7 (c) No witness may be accompanied by counsel while
8 testifying before an investigative grand jury. Nothing herein
9 shall be construed to prohibit a witness from conferring with
10 counsel outside the presence of the grand jury at any time
11 during the course of his testimony.

12 (d) No witness shall be prohibited from disclosing his
13 testimony before the investigative grand jury except for cause
14 shown in a hearing before the supervising judge. In no event may
15 a witness be prevented from disclosing his testimony to his
16 attorney.

17 Section 9. Approval of submission of investigations by the
18 attorney for the Commonwealth to the investigative
19 grand jury.

20 (a) Before submitting an investigation to the investigative
21 grand jury the attorney for the Commonwealth shall submit a
22 petition to the supervising judge. This petition shall allege
23 that the matter in question should be brought to the attention
24 of the investigative grand jury because the investigative
25 resources of the grand jury are necessary for proper
26 investigation. The petition shall allege that one or more of the
27 investigative resources of the grand jury are required in order
28 to adequately investigate the matter. The supervisory judge
29 shall then within ten days of receipt of the petition issue an
30 order approving submission of the matter to the investigative

1 grand jury.

2 Refusal of the supervisory judge to grant the order shall be
3 appealable to the Chief Justice of the Supreme Court or to such
4 other justice as is designated by rule to receive such appeals.

5 (b) After the attorney for the Commonwealth has secured the
6 approval of the supervising judge for submitting a matter to the
7 investigative grand jury any or all of the investigative
8 resources of the investigative grand jury may be used as regards
9 the investigation.

10 Section 10. Investigative grand jury indictments.

11 (a) Should the investigative grand jury determine that upon
12 the basis of evidence presented to it a criminal indictment
13 should be returned against an individual, the grand jury shall
14 direct the attorney for the Commonwealth to prepare a bill of
15 indictment which shall be submitted to the investigative grand
16 jury for a vote. Should a majority of the full grand jury vote
17 approval for the indictment it shall then be presented to the
18 supervising judge.

19 (b) The supervising judge shall then schedule a probable
20 cause hearing at which the attorney for the Commonwealth shall
21 present evidence from the grand jury record to demonstrate that
22 the decision of the grand jury to return an indictment was based
23 upon evidence before it which constitutes probable cause that
24 the indicted individual committed the offenses alleged. The
25 individual sought to be indicted shall have the right to be
26 present at this hearing and to contest the allegations of the
27 Commonwealth's attorney.

28 (c) If the supervising judge determines on the basis of the
29 evidence submitted at the hearing that there is probable cause
30 for the indictment he shall approve it and direct that it be

1 filed with the court. No indictment approved by an investigating
2 grand jury shall be filed until such a probable cause hearing
3 shall be held.

4 (d) The supervising judge may seal the proposed indictment
5 before or after the conducting of the hearing for cause shown.

6 (e) Whenever a multi-county investigating grand jury returns
7 an indictment against any person or persons the Attorney General
8 or his designee shall, with respect to the alleged criminal
9 activities, be authorized to prosecute said person or persons on
10 behalf of the Commonwealth by instituting criminal proceedings
11 in the county of appropriate venue. The Attorney General or his
12 designee shall take the oath of office required by law to be
13 taken of district attorneys, and shall be clothed with all the
14 powers and subject to all the liabilities imposed upon them by
15 law.

16 (f) In any case where a multi-county investigating grand
17 jury returns an indictment the supervising judge shall select
18 the county for conducting the trial from among those counties
19 having venue, or if necessary in the interest of justice direct
20 a change of venue.

21 Section 11. Investigative grand jury reports.

22 (a) Any investigative grand jury, by an affirmative majority
23 vote of the whole investigative grand jury, may, at any time
24 during its term submit to the supervising judge an investigative
25 grand jury report.

26 (b) The judge to whom such report is submitted shall examine
27 it and the record of the investigative grand jury and, except as
28 otherwise provided in this section, shall make an order
29 accepting and filing such report as a public record with the
30 court of common pleas of the county or counties which are the

1 subject of such report only if the report is based upon facts
2 received in the course of an investigation authorized by this
3 act and is supported by the preponderance of the evidence.

4 (c) Upon the submission of a report pursuant to subsection
5 (a), if the supervising judge finds that the filing of such
6 report as a public record may prejudice fair consideration of a
7 pending criminal matter, he shall order such report sealed and
8 such report shall not be subject to subpoena or public
9 inspection during the pendency of such criminal matter except
10 upon order of court.

11 (d) Failure of the supervising judge to accept and file as a
12 public record a report submitted under this section may, upon
13 affirmative majority vote of the full investigative grand jury,
14 be appealed to the Chief Justice of the Supreme Court or such
15 justice of the Supreme Court who is designated by rule to hear
16 such appeals.

17 (e) If the supervising judge finds that the report is
18 critical of an individual not indicted for a criminal offense
19 the supervising judge may at his sole discretion allow the named
20 individual to submit a response to the allegations contained in
21 the report. The supervising judge may then at his discretion
22 allow the response to be attached to the report as part of the
23 report before the report is made part of the public record
24 pursuant to subsection (b).

25 Section 12. Costs of investigative grand juries.

26 (a) The costs for a county investigative grand jury shall be
27 borne by the county in which it is impaneled.

28 (b) The costs for any multi-county investigative grand jury
29 shall be borne by the Commonwealth.

30 Section 13. Compensation of investigative grand jurors.

Investigative grand jurors shall be compensated in accordance with the rules of court for compensating petit jurors in the county or counties in which said grand jury is sitting.

Section 14. Protection of employment of jurors.

(a) An employer shall not deprive an employee of his employment, seniority position or benefits, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as an investigative grand juror or attends court for prospective investigative grand jury service. Nothing herein shall be construed to require the employer to compensate the employee for employment time lost because of said grand jury service.

(b) Any employer who violates subsection (a) is guilty of a summary offense.

(c) If any employer penalizes an employee in violation of subsection (a) the employee within six months may bring a civil action for recovery of wages or benefits lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed wages and benefits actually lost. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

(d) This section shall not apply to any employer in any retail or service industry employing fewer than 15 persons or any employer in any manufacturing industry employing fewer than 40 persons. Any individual not entitled to reemployment under subsection (a) shall be entitled upon request to the presiding judge to be excused from grand jury service.

Section 15. Effective date.

This act shall take effect immediately.