

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 343

BY SENATORS COLE (MR. PRESIDENT), HALL,

KESSLER AND TRUMP

[Originating in the Committee on the Judiciary;

reported on January 28, 2016.]

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 as custodians of records,
4 documents and other evidence subpoenaed by grand jury; authorizing designated
5 custodians use subpoenaed records, documents and other evidence for investigative
6 purposes prior to such records, documents or other evidence being presented to grand
7 jury; requiring custodians execute disclosure statements to preserve grand jury secrecy;
8 authorizing custodian to share subpoenaed materials with other law-enforcement officers
9 and agencies; allowing for successor custodians; requiring presentation of subpoenaed
10 materials held by custodian be presented to the next session of the grand jury meeting
11 after receipt; limiting law-enforcement use of such subpoenaed materials to legitimate
12 investigative and prosecutorial purposes relevant to investigation underlying the issuance
13 of subpoena; and defining “prosecuting attorney” and “investigator”.

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) Notwithstanding any provision of this code to the contrary, records, items or other
2 evidence subpoenaed before a grand jury may, in the discretion of the prosecuting attorney, be
3 permitted to be delivered to a designated law-enforcement officer or investigator who may serve
4 as the custodian of the records, items or other evidence. The designated custodian conducting
5 an investigation to which the subpoenaed records, items or other evidence are relevant may keep,
6 review and analyze the records and otherwise use the subpoenaed materials for legitimate
7 investigative purposes. Should circumstances arise which require the designation of a successor

8 custodian, the successor custodian shall comply with the provisions of subsection (b) of this
9 section. The records, items or other evidence subpoenaed shall be supplied by the officer or
10 investigator to the next session of the grand jury.

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

21 (c) The designated custodian may retain the record, item or other evidence in his or her
22 possession, care, custody or control until the termination of the investigation or prosecution.

23 (d) As used in this section, "prosecuting attorney" shall mean a prosecuting attorney,
24 assistant prosecuting attorney or duly appointed special prosecuting attorney.

25 (e) For purposes of this section, "investigator" shall mean an investigator employed by a
26 prosecuting attorney's office or an employee of a state agency authorized by the provisions of
27 this code to perform criminal investigations.