

No. 1978-271

AN ACT

SB 1319

Providing for investigating grand juries.

TABLE OF CONTENTS

Section 1.	Short title.
Section 2.	Definitions.
Section 3.	Convening the county investigating grand jury.
Section 4.	Convening the multi-county investigating grand jury.
Section 5.	Composition of the investigating grand jury.
Section 6.	Term of investigating grand jury.
Section 7.	Powers of the investigating grand jury.
Section 8.	Investigating grand jury proceedings.
Section 9.	Submission of investigations by the attorney for the Commonwealth to the investigating grand jury.
Section 10.	Investigating grand jury indictments.
Section 11.	Investigating grand jury reports.
Section 12.	Costs of investigating grand juries.
Section 13.	Compensation of investigating grand jurors.
Section 14.	Protection of employment of jurors.
Section 15.	Effective date.

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

Section 1. Short title.

This act shall be known and may be cited as the "Investigating Grand Jury Act."

Section 2. Definitions.

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

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grand jury is summoned, or his designee, or the Attorney General or his designee if the Attorney General has superseded the district attorney; the Attorney General, or his designee, with respect to multi-county investigating grand juries.

"Investigating grand jury." The county investigating grand jury or the multi-county investigating grand jury or both.

"Investigating grand jury report." A report submitted by the investigating grand jury to the supervising judge regarding conditions relating to organized crime or public corruption or both; or proposing recommendations for legislative, executive, or administrative action in the public interest based upon stated findings.

“Investigative resources of the grand jury.” The power to compel the attendance of investigating witnesses; the power to compel the testimony of investigating witnesses under oath; the power to take investigating testimony from witnesses who have been granted immunity; the power to require the production of documents, records and other evidence; the power to obtain the initiation of civil and criminal contempt proceedings; and every investigative power of any grand jury of the Commonwealth.

“Multi-county investigating grand jury.” A Statewide or regional investigating grand jury convened by a justice of the Supreme Court upon the application of the Attorney General and having jurisdiction to inquire into organized crime or public corruption or both under circumstances wherein more than one county is named in the order convening said investigating grand jury.

“Organized crime.” The unlawful activity of an association trafficking in illegal goods or services, including but not limited to gambling, prostitution, loan sharking, controlled substances, labor racketeering, or other unlawful activities; or any continuing criminal conspiracy or other unlawful practice which has as its objective:

- (1) large economic gain through fraudulent or coercive practices; or
- (2) improper governmental influence.

“Public corruption.” The unlawful activity under color of or in connection with any public office or employment of:

- (1) any public official or public employee, or the agent of any public official or public employee under color of or in connection with any public office or employment; or
- (2) any candidate for public office or the agent of any candidate for public office.

“Supervising judge.” The common pleas judge designated by the president judge to supervise the activities of the county investigating grand jury, or the common pleas judge designated by a justice of the Supreme Court to supervise the activities of the multi-county investigating grand jury.

Section 3. Convening the county investigating grand jury.

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

(b) Application may be made to the president judge of the court of common pleas of any county by the attorney for the Commonwealth for an order directing that a county investigating grand jury be summoned, stating in such application that the convening of a county investigating grand jury is necessary because of the existence of criminal activity within the county which can best be fully investigated using the investigative resources of the grand jury. Within ten days of receipt of such application, the president judge shall issue an order granting the request. The order shall specify which judge is to be the supervising judge of the county investigating grand jury. Refusal to grant an application under this

subsection shall be appealable to the Chief Justice of the Supreme Court or such justice of the Supreme Court who is designated by rule to hear such appeals.

(c) In the absence of an order under subsection (b), the president judge of the court of common pleas upon his own motion may issue an order directing that a county investigating grand jury be summoned: Provided, however, That the summoning of such grand jury may, in the discretion of the court, be stayed if the district attorney of the county and the Attorney General both certify to the court that, in their judgments, the summoning of such grand jury is not necessary at such time.

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

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

(a) Application for a multi-county investigating grand jury may be made by the Attorney General to the Chief Justice of the Supreme Court or to such justice of the Supreme Court who is designated by rule to receive such application. In such application the Attorney General shall state that, in his judgment, the convening of a multi-county investigating grand jury is necessary because of organized crime or public corruption or both involving more than one county of the Commonwealth and that, in his judgment, the investigation cannot be adequately performed by an investigating grand jury available under section 3. The application shall specify for which counties the multi-county investigating grand jury is to be convened. Within ten days of receipt of such application, the justice shall issue an order granting the same. Failure to grant such application shall be appealable to the entire Supreme Court.

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

(1) convene a multi-county investigating grand jury having Statewide jurisdiction, or jurisdiction over all counties requested in the application by the Attorney General;

(2) designate a judge of a court of common pleas to be the supervising judge over such multi-county investigating grand jury and provide that such judge shall with respect to investigations, indictments, reports, and all other proper activities of said investigating multi-county grand jury, have jurisdiction over all counties in the jurisdiction of said multi-county investigating grand jury;

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

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

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

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

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

(d) The impaneling of a multi-county investigating grand jury shall in no way diminish the responsibility and the authority of the district attorneys within their jurisdictions to investigate and prosecute organized crime or public corruption or both.

Section 5. Composition of the investigating grand jury.

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

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

(c) The supervising judge shall appoint a foreman from among the members of the investigating grand jury. The members of the investigating grand jury shall then elect a secretary.

Section 6. Term of investigating grand jury.

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

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

(c) If, at any time within the original term of any investigating grand jury or any extension thereof, the court determines that the investigating grand jury is not conducting proper investigative activity, the court may order that such grand jury be discharged. An order of discharge under this subsection shall not become effective less than ten days after the date on which it is issued and actual notice given to the attorney for the Commonwealth and the foreman of the investigating grand jury, and may be appealed by the attorney for the Commonwealth to the Chief Justice of the Supreme Court or such justice of the Supreme Court who is designated

by rule to hear such appeals. When an appeal is taken, the grand jury shall continue to exercise its powers pending the disposition thereof.

(d) Whenever the attorney for the Commonwealth determines that the volume of work of an investigating grand jury exceeds the capacity of the investigating grand jury to discharge its obligations, he may make application to the court to impanel additional investigating grand juries under the provisions of sections 3 and 4.

Section 7. Powers of the investigating grand jury.

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

(b) The investigating grand jury shall have the power to indict any person who appears to have committed within the county or counties in which such investigating grand jury is summoned an offense against the criminal laws of the Commonwealth. The power of an investigating grand jury to indict shall be exercised in the same manner, and upon the same standards and evidence, as in the case of other grand juries except as modified by section 10. An indictment by an investigating grand jury shall constitute the commencement of criminal proceedings against the defendant named therein; and the proceedings prior and subsequent to such indictment shall not include a complaint, preliminary hearing, information or presentment to another grand jury.

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

Section 8. Investigating grand jury proceedings.

(a) Any document produced before an investigating grand jury may be copied or reproduced. Each statement, question, comment or response of the supervising judge, the attorney for the Commonwealth, any witness, any grand juror or any other person which is made in the presence of the investigating grand jury, except its deliberations and the vote of any juror, shall be stenographically recorded or transcribed or both.

(b) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the Commonwealth for use in the performance of their duties. The attorneys for the Commonwealth may with the approval of the supervising judge disclose matters occurring before the investigating grand jury including transcripts of testimony to local, State, other state or Federal law

enforcement or investigating agencies to assist them in investigating crimes under their investigative jurisdiction. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court. All such persons shall be sworn to secrecy, and shall be in contempt of court if they reveal any information which they are sworn to keep secret.

(c) (1) A witness subpoenaed to appear and testify before an investigating grand jury or to produce documents, records or other evidence before an investigating grand jury shall be entitled to the assistance of counsel, including assistance during such time as the witness is questioned in the presence of the investigating grand jury. In the event counsel of the witness' choice is not available, he shall be required to obtain other counsel within a reasonable time in order that the work of the grand jury may proceed.

(2) Such counsel may be retained by the witness or shall be appointed in the case of any person unable to procure sufficient funds to obtain legal representation.

(3) Such counsel shall be allowed to be present in the grand jury room during the questioning of the witness and shall be allowed to advise the witness but shall make no objections or arguments or otherwise address the grand jury or the attorney for the Commonwealth. The supervising judge shall have the same power to remove such counsel from the grand jury room as a judge has with respect to an attorney in any court proceeding. Violation of this subsection shall be punishable as contempt by the supervising judge.

(4) An attorney, or attorneys who are associated in practice, shall not continue multiple representation of clients in a grand jury proceeding if the exercise of the attorney's independent professional judgment on behalf of one of the clients will or is likely to be adversely affected by his representation of another client. If the supervising judge determines that an individual's interests will or is likely to be adversely affected, he may order separate representation of witnesses, giving appropriate weight to an individual's right to counsel of his own choosing.

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

Section 9. Submission of investigations by the attorney for the Commonwealth to the investigating grand jury.

(a) Before submitting an investigation to the investigating grand jury the attorney for the Commonwealth shall submit a notice to the supervising judge. This notice shall allege that the matter in question should be brought to the attention of the investigating grand jury because the investigative resources of the grand jury are necessary for proper investigation. The

notice shall allege that one or more of the investigative resources of the grand jury are required in order to adequately investigate the matter.

(b) After the attorney for the Commonwealth has filed the notice submitting a matter to the investigating grand jury any or all of the investigative resources of the investigating grand jury may be used as regards the investigation.

Section 10. Investigating grand jury indictments.

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

(b) The supervising judge shall then schedule a probable cause hearing which may in the interests of justice be held in camera and at which the attorney for the Commonwealth shall present evidence from the grand jury record to demonstrate that the decision of the grand jury to return an indictment was based upon evidence before it which constitutes probable cause that the indicted individual committed the offenses alleged. The person sought to be indicted shall have the right to be present at and participate in this hearing with the assistance of retained or appointed counsel and to contest the allegations of the attorney for the Commonwealth.

(c) If the supervising judge determines on the basis of the evidence submitted at the hearing that there is probable cause for the indictment he shall approve it and direct that it be filed with the court. No indictment approved by an investigating grand jury shall be filed until such a probable cause hearing shall be held.

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

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

(f) In any case where a multi-county investigating grand jury returns an indictment the supervising judge shall select the county for conducting the trial from among those counties having jurisdiction.

Section 11. Investigating grand jury reports.

(a) Any investigating grand jury, by an affirmative majority vote of the full investigating grand jury, may, at any time during its term submit to the supervising judge an investigating grand jury report.

(b) The judge to whom such report is submitted shall examine it and the record of the investigating grand jury and, except as otherwise provided in this section, shall issue an order accepting and filing such report as a public record with the court of common pleas of the county or counties which are the subject of such report only if the report is based upon facts received in the course of an investigation authorized by this act and is supported by the preponderance of the evidence.

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

(d) Failure of the supervising judge to accept and file as a public record a report submitted under this section may be appealed by the attorney for the Commonwealth to the Chief Justice of the Supreme Court or such justice of the Supreme Court who is designated by rule to hear such appeals.

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

Section 12. Costs of investigating grand juries.

(a) The costs of a county investigating grand jury shall be borne by the county in which it is impaneled.

(b) The costs of any multi-county investigating grand jury shall be borne by the Commonwealth.

Section 13. Compensation of investigating grand jurors.

Investigating 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 investigating grand juror or attends court for prospective investigating 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.

APPROVED—The 22nd day of November, A. D. 1978.

MILTON J. SHAPP