

1 S.182

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedure; grand juries

6 Statement of purpose of bill as introduced: This bill proposes to permit  
7 disclosure of the decision when a grand jury does not return a true bill in a  
8 matter involving actions committed by a law enforcement officer.

9 An act relating to the disclosure of a grand jury decision involving actions  
10 committed by a law enforcement officer

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. Rule 6(e) of the Vermont Rules of Criminal Procedure is amended to  
13 read:

14 (e) Recording and Disclosing the Proceedings.

15 (1) Recording the Proceedings. Except while the grand jury is  
16 deliberating or voting, all proceedings must be recorded by a court reporter or  
17 by a suitable recording device. The persons taking the testimony must make  
18 oath that they will keep secret all matters and things coming before the grand  
19 jury before entering upon their duties. The validity of a prosecution is not  
20 affected by the unintentional failure to make a recording. Unless the court

1 orders otherwise, the prosecuting attorney will retain control of the recording,  
2 the reporter's notes, and any transcript prepared from those notes.

3 (2) Secrecy.

4 (A) No obligation of secrecy may be imposed on any person except  
5 in accordance with Rule 6(e)(2)(B).

6 (B) Unless these rules provide otherwise, the following persons must  
7 not disclose a matter occurring before the grand jury:

8 (i) a grand juror;

9 (ii) an interpreter;

10 (iii) a court reporter;

11 (iv) an operator of a recording device;

12 (v) a person who transcribes recorded testimony;

13 (vi) the prosecuting attorney;

14 (vii) a court security officer, if case circumstances have required

15 one; or

16 (viii) a person to whom disclosure is made under Rule  
17 6(e)(3)(A)(ii).

18 (3) Exceptions.

19 (A) Disclosure of a grand-jury matter—other than the grand jury's  
20 deliberations or any grand juror's vote—may be made:

1           (i) to another prosecuting attorney for use in performing that  
2 attorney's duty to enforce the state's criminal laws, and such staff members  
3 assigned to that attorney and necessary to the performance of that attorney's  
4 duty;

5           (ii) to any government personnel—including those of a state, state  
6 subdivision, federal government, Indian tribe, or foreign government—that the  
7 prosecuting attorney considers necessary to assist in performing that attorney's  
8 duty to enforce the state's criminal laws; or

9           (iii) pursuant to V.R.Cr.P. 16(a)(2).

10           (B) A person to whom information is disclosed under Rule  
11 6(e)(3)(A)(ii) may use that information only to assist a prosecuting attorney in  
12 performing that attorney's duty to enforce the state's criminal laws. The  
13 prosecuting attorney must promptly provide the court that impaneled the grand  
14 jury with the names of all persons to whom a disclosure has been made, and  
15 must certify that the attorney has advised those persons of their obligation of  
16 secrecy under this rule.

17           (C) The prosecuting attorney may disclose any grand-jury matter to  
18 another grand jury convened under the provisions of this rule.

19           (D) The court may authorize disclosure—at a time, in a manner, and  
20 subject to any other conditions that it directs—of a grand-jury matter,  
21 including a transcript of proceedings:

1 (i) preliminarily to or in connection with a judicial proceeding;

2 (ii) at the request of a defendant who shows that a ground may  
3 exist to dismiss the indictment because of a matter that occurred before the  
4 grand jury;

5 (iii) at the request of a prosecuting attorney, when sought by an  
6 appropriate official of another jurisdiction, including the federal government,  
7 for the purpose of enforcing the criminal laws of another jurisdiction, upon a  
8 showing that such disclosure may constitute evidence of a violation of the  
9 criminal laws of that other jurisdiction; or

10 (iv) at the request of the prosecuting attorney upon a showing that  
11 the matter may disclose a violation of military criminal law under the Uniform  
12 Code of Military Justice, as long as the disclosure is to an appropriate military  
13 official for the purpose of enforcing that law.

14 (E) A petition to disclose a grand-jury matter under Rule  
15 6(e)(3)(D)(i) must be filed in the unit where the grand jury convened. Unless  
16 the hearing is ex parte—as it may be when the prosecuting attorney is the  
17 petitioner—the petitioner must serve the petition on, and the court must afford  
18 a reasonable opportunity to appear and be heard to:

19 (i) the prosecuting attorney;

20 (ii) the parties to the judicial proceeding; and

21 (iii) any other person whom the court may designate.

1 (F) If the petition to disclose arises out of a judicial proceeding in  
2 another unit, the petitioned court must transfer the petition to the other court  
3 unless the petitioned court can reasonably determine whether disclosure is  
4 proper. If the petitioned court decides to transfer, it must send to the transferee  
5 court the material sought to be disclosed, if feasible, and a written evaluation  
6 of the need for continued grand-jury secrecy. The transferee court must afford  
7 those persons identified in Rule 6(e)(3)(E) a reasonable opportunity to appear  
8 and be heard.

9 (G) Notwithstanding subdivision (e)(2)(B) of this rule, the Attorney  
10 General or a State's Attorney may disclose the decision of a grand jury not to  
11 return a true bill in a matter involving actions committed by a law enforcement  
12 officer while acting within the scope of his or her employment or while on  
13 duty as a law enforcement officer.

14 \* \* \*

15 Sec. 2. EFFECTIVE DATE

16 This act shall take effect on passage.