

NEW SECTION. Sec. 13. If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 14. This 1971 amendatory act will take effect July 1, 1973.

Passed the House April 1, 1971.

Passed the Senate May 8, 1971.

Approved by the Governor May 10, 1971.

Filed in Office of Secretary of State May 11, 1971.

CHAPTER 57

[Engrossed House Bill No. 175]

CRIMINAL INVESTIGATORY ACT OF 1971

AN ACT Relating to grand juries and criminal investigations; repealing section 3, chapter 48, Laws of 1891 and RCW 2.36.030; repealing section 1, chapter 90, Laws of 1951 and RCW 2.36.031; repealing section 2, chapter 90, Laws of 1951 and RCW 2.36.033; repealing section 5, chapter 57, Laws of 1911 and RCW 2.36.040; repealing section 45, page 110, Laws of 1854, section 163, page 220, Laws of 1873, section 977, Code of 1881, section 11, chapter 28, Laws of 1891 and RCW 10.28.010; repealing section 47, page 110, Laws of 1854, section 165, page 220, Laws of 1873, section 979, Code of 1881, section 12, chapter 28, Laws of 1891 and RCW 10.28.020; repealing section 46, page 110, Laws of 1854, section 164, page 220, Laws of 1873, section 978, Code of 1881 and RCW 10.28.030; repealing section 48, page 110, Laws of 1854, section 166, page 220, Laws of 1873, section 980, Code of 1881 and RCW 10.28.040; repealing section 49, page 110, Laws of 1854, section 167, page 220, Laws of 1873, section 981, Code of 1881, section 13, chapter 28, Laws of 1891 and RCW 10.28.050; repealing section 50, page 110, Laws of 1854, section 168, page 221, Laws of 1873, section 982, Code of 1881, section 1, chapter 74, Laws of 1939 and RCW 10.28.060; repealing section 52, page 110, Laws of 1854, section 170, page 221, Laws of 1873, section 984, Code of 1881, section 14, chapter 28, Laws of 1891 and RCW 10.28.070; repealing section 1, chapter 130, Laws of 1967 and RCW 10.28.075; repealing section 51, page 110, Laws of 1854, section 169, page 221, Laws of 1873, section 983, Code of 1881 and RCW 10.28.080; repealing section 179, page 239, Laws of 1869, section 184,

page 224, Laws of 1873, section 1001, Code of 1881, section 17, chapter 28, Laws of 1891 and RCW 10.28.085; repealing section 53, part, page 111, Laws of 1854, section 1, page 19, Laws of 1865, section 171, page 221, Laws of 1873, section 985, Code of 1881, section 15, chapter 28, Laws of 1891 and RCW 10.28.090; repealing section 57, page 111, Laws of 1854, section 176, page 222, Laws of 1873, section 992, Code of 1881 and RCW 10.28.100; repealing section 53, page 111, Laws of 1854, section 172, page 221, Laws of 1873, section 999, Code of 1881 and RCW 10.28.110; repealing section 54, page 111, Laws of 1854, section 173, page 222, Laws of 1873, section 990, Code of 1881 and RCW 10.28.120; repealing section 986, Code of 1881 and RCW 10.28.130; repealing section 1, page 19, Laws of 1864, section 987, Code of 1881 and RCW 10.28.140; repealing sections 55 and 59, page 111, Laws of 1854, section 173, page 238, Laws of 1869, section 178, page 223, Laws of 1873, section 994, Code of 1881, section 1, chapter 150, Laws of 1925 ex. sess. and RCW 10.28.150; repealing section 996, Code of 1881 and RCW 10.28.160; repealing section 177, page 239, Laws of 1869, section 182, page 223, Laws of 1873, section 999, Code of 1881 and RCW 10.28.170; repealing section 178, page 239, Laws of 1869, section 183, page 224, Laws of 1873, section 1000, Code of 1881, section 16, chapter 28, Laws of 1891 and RCW 10.28.180; repealing section 2, page 20, Laws of 1864, section 988, Code of 1881 and RCW 10.28.190; repealing section 2, page 418, Laws of 1869, section 2104, Code of 1881 and RCW 10.28.195; repealing section 175, page 239, Laws of 1869, section 180, page 223, Laws of 1873, section 997, Code of 1881 and RCW 10.28.200; repealing section 176, page 239, Laws of 1869, section 181, page 233, Laws of 1873, section 998, Code of 1881 and RCW 10.28.210; repealing section 56, page 111, Laws of 1854, sections 175 and 181, pages 222 and 223, Laws of 1873, section 991, Code of 1881 and RCW 10.28.215; repealing section 58, page 111, Laws of 1854, section 177, page 222, Laws of 1873, section 993, Code of 1881 and RCW 10.28.220; declaring an emergency; and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. This act shall be known as the criminal investigatory act of 1971 and is enacted on behalf of the people of the state of Washington to serve law enforcement in combating crime and corruption.

NEW SECTION. Sec. 2. For the purposes of this act:

(1) The term "court" shall mean any superior court in the state of Washington.

(2) The term "public attorney" shall mean the prosecuting attorney of the county in which a grand jury or special grand jury is impaneled; the attorney general of the state of Washington when acting pursuant to section 7 (9) of this 1971 act and, the special prosecutor appointed by the governor, pursuant to section 7 (10) of this 1971 act, and their deputies or special deputies.

(3) The term "indictment" shall mean a written accusation found by a grand jury.

(4) The term "principal" shall mean any person whose conduct is being investigated by a grand jury or special inquiry judge.

(5) The term "witness" shall mean any person summoned to appear before a grand jury or special inquiry judge to answer questions or produce evidence.

(6) A "grand jury" consists of not less than twelve nor more than seventeen persons, is impaneled by a superior court and constitutes a part of such court. The functions of a grand jury are to hear, examine and investigate evidence concerning criminal activity and corruption and to take action with respect to such evidence. The grand jury shall operate as a whole and not by committee.

(7) A "special inquiry judge" is a superior court judge designated by a majority of the superior court judges of a county to hear and receive evidence of crime and corruption.

NEW SECTION. Sec. 3. No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause.

NEW SECTION. Sec. 4. The court shall select the members of the grand jury from either the petit jury panel, or from a grand jury panel of one hundred individuals drawn by lot in the manner provided for petit jury panels under chapter 2.36 RCW, or from both.

NEW SECTION. Sec. 5. In every county a superior court judge as designated by a majority of the judges shall be available to serve as a special inquiry judge to hear evidence concerning criminal activity and corruption.

NEW SECTION. Sec. 6. Neither the grand jury panel nor any individual grand juror may be challenged, but the court may:

(1) At any time before a grand jury is sworn discharge the panel and summon another if it finds that the original panel does not substantially conform to the requirements of chapter 2.36 RCW; or

(2) At any time after a grand juror is drawn, refuse to swear

him, or discharge him after he has been sworn, upon a finding that he is disqualified from service pursuant to chapter 2.36 RCW, or incapable of performing his duties because of bias or prejudice, or guilty of misconduct in the performance of his duties such as to impair the proper functioning of the grand jury.

NEW SECTION. Sec. 7. (1) When the grand jury is impaneled, the court shall appoint one of the jurors to be foreman, and also another of the jurors to act as foreman in case of the absence of the foreman.

(2) The grand jurors must be sworn pursuant to the following oath: "You, as grand jurors for the county of, do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge and you will submit things truly as they come to your knowledge, according to your charge the laws of this state and your understanding; you shall indict no person through envy, hatred, malice or political consideration; neither will you leave any person unindicted through fear, favor, affection, reward or the hope thereof or political consideration. The counsel of the state, his advice, and that of your fellows you shall keep secret."

(3) After a grand jury has been sworn, the court must deliver or cause to be delivered to each grand juror a printed copy of all the provisions of this act, and the court may give the grand jurors any oral or written instructions, or both, relating to the proper performance of their duties at any time it deems necessary or appropriate.

(4) The court shall appoint a reporter to record the proceedings before the grand jury or special inquiry judge, and shall swear him not to disclose any testimony or the name of any witness except as provided in section 9 of this 1971 act. In addition, the foreman of the grand jury may, in his discretion, select one of the grand jurors to act as secretary to keep records of the grand jury's business.

(5) The court, whenever necessary, shall appoint an interpreter, and shall swear him not to disclose any testimony or the name of any witness except as provided in section 9 of this 1971 act.

(6) When a person held in official custody is a witness before a grand jury or special inquiry judge, a public servant assigned to guard him during his appearance may accompany him. The court shall swear such public servant not to disclose any testimony or the name of any witness except as provided in section 9 of this 1971 act.

(7) Proceedings of a grand jury shall not be valid unless at least twelve of its members are present. The foreman or acting foreman of the grand jury shall conduct proceedings in an orderly manner and shall administer an oath or affirmation in the manner

prescribed by law to any witness who shall testify before the grand jury.

(8) The legal advisers of a grand jury are the court and public attorneys, and a grand jury may not seek or receive legal advice from any other source. When necessary or appropriate, the court or public attorneys or both must instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions shall be recorded by the reporter.

(9) (a) Upon request of the prosecuting attorney of the county in which a grand jury or special inquiry judge is impaneled, the attorney general shall assist such prosecuting attorney in attending such grand jury or special inquiry judge.

(b) Whenever directed by the court, the attorney general shall supersede the prosecuting attorney in attending the grand jury and in which event the attorney general shall be responsible for the prosecution of any indictment returned by the grand jury.

(c) When the attorney general is conducting a criminal investigation pursuant to powers otherwise granted to him, he shall attend all grand juries or special inquiry judges in relation thereto and shall prosecute any indictments returned by a grand jury.

(10) After consulting with the court and receiving its approval, the grand jury may request the governor to appoint a special prosecutor to attend the grand jury. The grand jury shall in the request nominate three persons approved by the court. From those nominated, the governor shall appoint a special prosecutor, who shall supersede the prosecuting attorney and the attorney general and who shall be responsible for the prosecution of any indictments returned by the grand jury attended by him.

(11) A public attorney shall attend the grand jurors when requested by them, and he may do so on his own motion within the limitations of sections 2 (2), 7 (9) and 7 (10) of this 1971 act hereof, for the purpose of examining witnesses in their presence, or of giving the grand jurors legal advice regarding any matter cognizable by them. He shall also, when requested by them, draft indictments and issue process for the attendance of witnesses.

(12) Subject to the approval of the court, the corporation counsel or city attorney for any city or town in the county where any grand jury has been convened may appear as a witness before the grand jury to advise the grand jury of any criminal activity or corruption within his jurisdiction.

NEW SECTION. Sec. 8. No person shall be present at sessions of the grand jury or special inquiry judge except the witness under examination and his attorney, public attorneys, the reporter, an interpreter, a public servant guarding a witness who has been held in custody, if any, and, for the purposes provided for in section 17 of

this 1971 act, any corporation counsel or city attorney. The attorney advising the witness shall only advise such witness concerning his right to answer or not answer any questions and the form of his answer and shall not otherwise engage in the proceedings. No person other than grand jurors shall be present while the grand jurors are deliberating or voting. Any person violating either of the above provisions may be held in contempt of court.

NEW SECTION. Sec. 9. (1) Every member of the grand jury shall keep secret whatever he or any other grand juror has said, and how he or any other grand juror has voted, except for disclosure of indictments, if any, as provided in section 15 of this 1971 act.

(2) No grand juror shall be permitted to state or testify in any court how he or any other grand juror voted on any question before them or what opinion was expressed by himself or any other grand juror regarding such question.

(3) No grand juror, public or private attorney, city attorney or corporation counsel, reporter, interpreter or public servant who held a witness in custody before a grand jury or special inquiry judge, or witness, principal or other person shall disclose the testimony of a witness examined before the grand jury or special inquiry judge or other evidence received by it, except when required by the court to disclose the testimony of the witness examined before the grand jury or special inquiry judge for the purpose of ascertaining whether it is consistent with that of the witness given before the court, or to disclose his testimony given before the grand jury or special inquiry judge by any person upon a charge against such person for perjury in giving his testimony or upon trial therefor, or when permitted by the court in furtherance of justice.

(4) The public attorney shall have access to all grand jury and special inquiry judge evidence and may introduce such evidence before any other grand jury or any trial in which the same may be relevant.

(5) The court upon a showing of good cause may make any or all grand jury or special inquiry judge evidence available to any other public attorney, prosecuting attorney, city attorney or corporation counsel upon proper application and with the concurrence of the public attorney attending such grand jury. Any witness' testimony, given before a grand jury or a special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the court. The court may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence:

(a) when given or presented before a special inquiry judge, if doing so is in the furtherance of justice; or

(b) when given or presented before a grand jury, if the court finds that doing so is necessary to prevent an injustice and that there is no reason to believe that doing so would endanger the life or safety of any witness or his family. The cost of any such transcript made available shall be borne by the applicant.

NEW SECTION. Sec. 10. The grand jurors shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information filed in such case, and all other indictable offenses within the county which are presented to them by a public attorney or otherwise come to their knowledge. If a grand juror knows or has reason to believe that an indictable offense, triable within the county, has been committed, he shall declare such a fact to his fellow jurors who may begin an investigation. In such investigation the grand juror may be sworn as a witness.

NEW SECTION. Sec. 11. The length of time which a grand jury may sit after being convened shall not exceed sixty days. Before expiration of the sixty day period and any extensions, and upon showing of good cause, the court may order the grand jury panel extended for a period not to exceed sixty days.

NEW SECTION. Sec. 12. Any individual called to testify before a grand jury or special inquiry judge, whether as a witness or principal, if not represented by an attorney appearing with the witness before the grand jury or special inquiry judge, must be told of his privilege against self-incrimination. Such an individual has a right to representation by an attorney to advise him as to his rights, obligations and duties before the grand jury or special inquiry judge, and must be informed of this right. The attorney may be present during all proceedings attended by his client unless immunity has been granted pursuant to section 13 of this 1971 act. After immunity has been granted, such an individual may leave the grand jury room to confer with his attorney.

NEW SECTION. Sec. 13. If in any proceedings before a grand jury or special inquiry judge, a person refuses, or indicates in advance a refusal, to testify or provide evidence of any other kind on the ground that he may be incriminated thereby, and if a public attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order. The hearing shall be subject to the provisions of sections 8 and 9 of this 1971 act, unless the witness shall request that the hearing be public.

If, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, the

witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but he shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to this section. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the grand jury.

NEW SECTION. Sec. 14. (1) Except as provided in this section, no person has the right to appear as a witness in a grand jury or special inquiry judge proceeding.

(2) A public attorney may call as a witness in a grand jury or special inquiry judge proceeding any person believed by him to possess information or knowledge relevant thereto and may issue legal process and subpoena to compel his attendance and the production of evidence.

(3) The grand jury or special inquiry judge may cause to be called as a witness any person believed by it to possess relevant information or knowledge. If the grand jury or special inquiry judge desires to hear any such witness who was not called by a public attorney, it may direct a public attorney to issue and serve a subpoena upon such witness and the public attorney must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the public attorney may apply to the court which impaneled the grand jury for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the court may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(4) The proceedings to summon a person and compel him to testify or provide evidence shall as far as possible be the same as proceedings to summon witnesses and compel their attendance. Such persons shall receive only those fees paid witnesses in superior court criminal trials.

NEW SECTION. Sec. 15. After hearing, examining and investigating the evidence before it, a grand jury may, in its discretion, issue an indictment against a principal. A grand jury shall find an indictment only when from all the evidence at least three-fourths of the jurors are convinced that there is probable cause to believe a principal is guilty of a criminal offense. When an indictment is found by a grand jury the foreman or acting foreman shall present it to the court.

NEW SECTION. Sec. 16. The grand jury may prepare its conclusions, recommendations and suggestions in the form of a grand jury report. Such report shall be released to the public only upon a

determination by a majority of the judges of the superior court of the county court that (1) the findings in the report deal with matters of broad public policy affecting the public interest and do not identify or criticize any individual; (2) the release of the report would be consistent with the public interest and further the ends of justice; and (3) release of the report would not prejudice any pending criminal investigation or trial.

NEW SECTION. Sec. 17. When any public attorney, corporation counsel or city attorney has reason to suspect crime or corruption, within the jurisdiction of such attorney, and there is reason to believe that there are persons who may be able to give material testimony or provide material evidence concerning such suspected crime or corruption, such attorney may petition the judge designated as a special inquiry judge pursuant to section 5 of this 1971 act for an order directed to such persons commanding them to appear at a designated time and place in said county and to then and there answer such questions concerning the suspected crime or corruption as the special inquiry judge may approve, or provide evidence as directed by the special inquiry judge.

NEW SECTION. Sec. 18. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify or provide evidence at such inquiry in response to an order, summons or subpoena.

NEW SECTION. Sec. 19. Upon petition of a public attorney to the special inquiry judge that there is reason to suspect that there exists evidence of crime and corruption in another county, and with the concurrence of the special inquiry judge and prosecuting attorney of the other county, the special inquiry judge may direct the public attorney to attend and participate in special inquiry judge proceedings in the other county held to inquire into crime and corruption which relates to crime or corruption under investigation in the initiating county. The proceedings of such special inquiry judge may be transcribed, certified and filed in the county of the public attorney's jurisdiction at the expense of that county.

NEW SECTION. Sec. 20. The following acts or parts of acts are each hereby repealed:

- (1) Section 3, chapter 48, Laws of 1891 and RCW 2.36.030;
- (2) Section 1, chapter 90, Laws of 1951 and RCW 2.36.031;
- (3) Section 2, chapter 90, Laws of 1951 and RCW 2.36.033;
- (4) Section 5, chapter 57, Laws of 1911 and RCW 2.36.040;
- (5) Section 45, page 110, Laws of 1854, section 163, page 220, Laws of 1873, section 977, Code of 1881, section 11, chapter 28, Laws of 1891 and RCW 10.28.010;

(6) Section 47, page 110, Laws of 1854, section 165, page 220, Laws of 1873, section 979, Code of 1881, section 12, chapter 28, Laws of 1891 and RCW 10.28.020;

(7) Section 46, page 110, Laws of 1854, section 164, page 220, Laws of 1873, section 978, Code of 1881 and RCW 10.28.030;

(8) Section 48, page 110, Laws of 1854, section 166, page 220, Laws of 1873, section 980, Code of 1881 and RCW 10.28.040;

(9) Section 49, page 110, Laws of 1854, section 167, page 220, Laws of 1873, section 981, Code of 1881, section 13, chapter 28, Laws of 1891 and RCW 10.28.050;

(10) Section 50, page 110, Laws of 1854, section 168, page 221, Laws of 1873, section 982, Code of 1881, section 1, chapter 74, Laws of 1939 and RCW 10.28.060;

(11) Section 52, page 110, Laws of 1854, section 170, page 221, Laws of 1873, section 984, Code of 1881, section 14, chapter 28, Laws of 1891 and RCW 10.28.070;

(12) Section 1, chapter 130, Laws of 1967 and RCW 10.28.075;

(13) Section 51, page 110, Laws of 1854, section 169, page 221, Laws of 1873, section 983, Code of 1881 and RCW 10.28.080;

(14) Section 179, page 239, Laws of 1869, section 184, page 224, Laws of 1873, section 1001, Code of 1881, section 17, chapter 28, Laws of 1891 and RCW 10.28.085;

(15) Section 53, part, page 111, Laws of 1854, section 1, page 19, Laws of 1865, section 171, page 221, Laws of 1873, section 985, Code of 1881, section 15, chapter 28, Laws of 1891 and RCW 10.28.090;

(16) Section 57, page 111, Laws of 1854, section 176, page 222, Laws of 1873, section 992, Code of 1881 and RCW 10.28.100;

(17) Section 53, page 111, Laws of 1854, section 172, page 221, Laws of 1873, section 989, Code of 1881 and RCW 10.28.110;

(18) Section 54, page 111, Laws of 1854, section 173, page 222, Laws of 1873, section 990, Code of 1881 and RCW 10.28.120;

(19) Section 986, Code of 1881 and RCW 10.28.130;

(20) Section 1, page 19, Laws of 1864, section 987, Code of 1881 and RCW 10.28.140;

(21) Sections 55 and 59, page 111, Laws of 1854, section 173, page 238, Laws of 1869, section 178, page 223, Laws of 1873, section 994, Code of 1881, section 1, chapter 150, Laws of 1925 ex. sess. and RCW 10.28.150;

(22) Section 996, Code of 1881 and RCW 10.28.160;

(23) Section 177, page 239, Laws of 1869, section 182, page 223, Laws of 1873, section 999, Code of 1881 and RCW 10.28.170;

(24) Section 178, page 239, Laws of 1869, section 183, page 224, Laws of 1873, section 1000, Code of 1881, section 16, chapter 28, Laws of 1891 and RCW 10.28.180;

(25) Section 2, page 20, Laws of 1864, section 988, Code of

1881 and RCW 10.28.190;

(26) Section 2, page 418, Laws of 1869, section 2104, Code of 1881 and RCW 10.28.195;

(27) Section 175, page 239, Laws of 1869, section 180, page 223, Laws of 1873, section 997, Code of 1881 and RCW 10.28.200;

(28) Section 176, page 239, Laws of 1869, section 181, page 233, Laws of 1873, section 998, Code of 1881 and RCW 10.28.210;

(29) Section 56, page 111, Laws of 1854, sections 175 and 181, pages 222 and 223, Laws of 1873, section 991, Code of 1881 and 10.28.215; and

(30) Section 58, page 111, Laws of 1854, section 177, page 222, Laws of 1873, section 993, Code of 1881 and RCW 10.28.220.

NEW SECTION. Sec. 21. This 1971 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect immediately.

Passed the House May 9, 1971.

Passed the Senate May 8, 1971.

Approved by the Governor May 10, 1971.

Filed in Office of Secretary of State May 11, 1971.

CHAPTER 68

[Senate Bill NO. 71]

MODEL ESCHEAT OF POSTAL SAVINGS SYSTEM ACCOUNT ACT

AN ACT Relating to the postal savings system; and enacting the Model Escheat of Postal Savings System Accounts Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. All postal savings system accounts created by the deposits of persons whose last known addresses are in the state which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have been abandoned by their owners and are declared to escheat and become the property of this state.

NEW SECTION. Sec. 2. The director of revenue shall request from the bureau of accounts of the United States treasury department records providing the following information: the names of depositors at the post offices of this state whose accounts are unclaimed, their last addresses as shown by the records of the post office department, and the balance in each account. He shall agree to return to the bureau of accounts promptly all account cards showing last addresses in another state.

NEW SECTION. Sec. 3. The director of revenue may bring