

# GRAND JURY STATUTES

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# ALABAMA

*Code of Ala § 12-17-275 (2014)*

## § 12-17-275. Duties.

The official court reporter shall attend in person, except as otherwise herein provided, the sessions of court held in the circuit for which he is appointed, and in every case, where directed by the judge or requested by a party thereto, he shall take full stenographic notes of the oral testimony and proceedings, except argument of counsel, and note the order in which all documentary evidence is introduced, all objections of counsel, the rulings of the court thereon and exceptions taken or reserved thereto. When directed by the judge, he shall attend the investigations of the grand jury and there take such notes of the testimony as directed by the district attorney or foreman. The original stenographic notes of such court reporter in each case or proceeding officially reported shall be preserved by him and treated as a part of the records of the respective courts, and upon his retirement from office, shall be turned over to the clerks of such courts. In cases where the testimony is taken orally before the judge, the court reporter, whenever ordered by the judge, shall transcribe his stenographic notes of such oral testimony and file the same.

# ALASKA

*Alaska R Crim Proc 6 (2015)*

## Rule 6. The Grand Jury

(a) By Whom Convened. -- The presiding superior court judge of the judicial district encompassing the grand jury location specified in section (b) shall convene the grand jury.

(b) Where Grand Juries Shall Be Convened. -- The grand jury shall be convened at the superior court location shown in the following table, based on the superior court venue district in which the matter under investigation occurred. The superior court venue districts are defined in the Criminal Rule 18 venue map.

Superior Court Venue District in which the matter under investigation occurred	Location at which the grand jury will be convened
Anchorage	Anchorage

Barrow	Barrow
Bethel	Bethel
Cordova	Anchorage or Palmer
Craig	Juneau, Ketchikan, or Sitka
Delta Junction	Fairbanks
Dillingham	Dillingham or Anchorage
Fairbanks	Fairbanks
Glennallen	Anchorage or Palmer
Homer	Kenai
Juneau	Juneau, Sitka, or Ketchikan
Kenai	Kenai
Ketchikan	Ketchikan, Sitka, or Juneau
Kodiak	Kodiak
Kotzebue	Kotzebue
Naknek	Anchorage
Nenana	Fairbanks
Nome	Nome
Palmer	Palmer
Petersburg	Juneau, Ketchikan, or Sitka
Seward	Kenai
Sitka	Sitka, Juneau, or Ketchikan
Tok	Fairbanks
Unalaska	Anchorage
Valdez	Anchorage or Palmer
Wrangell	Juneau, Ketchikan, or Sitka

The presiding judge of a judicial district shall be empowered to call a special jury to be convened at a site other than the site designated in this subsection if the presiding judge determines that the designation of a special site is necessary in the interest of justice.

(c) Selection of Prospective Grand Jurors. -- Prospective grand jurors shall have the qualifications and shall be drawn and selected as set forth by law, with the additional provisions:

(1) prospective grand jurors shall be selected from the population within a fifty-mile radius of the place where the grand jury is convened, and

(2) the presiding judge of the superior court may with the approval of the administrative director select prospective grand jurors at large from the judicial district in which the matter under investigation occurred.

(d) Summoning Grand Jurors. -- At least once each year the presiding judge of the superior court in each judicial district shall order one or more grand juries to be convened at such times as the public interest requires. The grand jury shall consist of not less than 12 nor more than 18 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement. Any qualified member of the grand jury panel not designated to serve

as a member of the grand jury may be placed on the petit jury panel. An otherwise qualified person called for petit jury service may be placed on the grand jury panel. A grand jury shall serve until discharged by the presiding judge but no grand jury may serve more than 4 months, unless this period is extended for good cause.

(e) Swearing and Instructing Jurors.

(1) The following oath shall be administered by the clerk of the superior court to the persons selected for grand jury duty:

"You and each of you as members of this grand jury for the State of Alaska, do solemnly swear or affirm that you will diligently inquire and true presentment make of all such matters as shall be given to you for consideration, or shall otherwise come to your knowledge in connection with your present service; that you will preserve the secrecy required by law as to all proceedings had before you; that you will present no one through envy, hatred or malice, or leave any one unrepresented through fear, affection, gain, reward, or hope thereof; but that you will present all things truly and impartially as they shall come to your knowledge according to the best of your understanding."

(2) When the grand jury is sworn, the court shall charge the jury with written instructions, which the court deems proper, concerning the powers and duties of the grand jury.

(f) Alternate Jurors. -- The presiding judge may direct that alternate jurors be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impanelled as provided in paragraph (s) of this rule. Alternate jurors shall be drawn in the same manner and shall have the same qualifications as the regular jurors, and if impanelled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors.

(g) Objections to Grand Jury and to Grand Jurors. -- A motion to dismiss the indictment or to expunge a report of the grand jury may be based upon objections to the array or the lack of legal qualification of an individual juror. An indictment shall not be dismissed nor a report expunged upon the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to paragraph (h) of this rule that a majority of the total number of grand jurors comprising the grand jury when the grand jury is sworn and charged with instructions, after deducting the number not legally qualified, concurred in finding the indictment or making the report.

(h) Foreperson and Deputy Foreperson. -- The presiding judge shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments and reports. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the finding of every indictment and the issuance of every report and shall file the record with the clerk of the court, but the record shall not be made public except on order of the presiding judge. During the absence of the foreperson, the deputy foreperson shall act as foreperson.

(i) Preparing Indictments and Presentments. -- The prosecuting attorney shall prepare all indictments and presentments for the grand jury, and shall attend their sittings to advise them of their duties and to examine witnesses in their presence.

(j) Record of Proceedings. -- All proceedings before the grand jury, including the testimony of witnesses and any statements made by the prosecuting attorney or by any of the jurors, shall be electronically recorded.

(k) Who May Be Present. -- The prosecuting attorney, the witness under examination, interpreters when needed, and a deputy clerk of the court for the purpose of recording the proceedings may be present while the grand jury is in session. No persons other than the jurors and any interpreter necessary to assist a juror who is hearing or speech impaired shall be present while the grand jury is deliberating or voting.

(l) Secrecy of Proceedings and Disclosure.

(1) The selection, swearing, and charging of grand jurors and all matters occurring before the grand jury are secret, except as otherwise provided by this rule. Disclosure of matters, other than the grand jury's deliberations and the vote of any juror, may be made to the prosecuting attorney for use in the performance of the prosecuting attorneys' duties. Otherwise a judge, juror, attorney, interpreter, court clerk or stenographer, or a typist who transcribes recorded testimony may disclose matters only when so directed by the court preliminary to or in connection with a judicial or administrative proceeding.

(2) The returns of indictments to the superior court are public proceedings, unless the court directs that the proceedings be closed to the public and the indictment kept secret until the defendant is in custody or has given bail. In that event, the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(3) No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(m) Availability of Grand Jury Record to Defendant. -- Upon request, a defendant shall be entitled to listen to the electronic recording of the grand jury proceedings and inspect all exhibits presented to the grand jury. Upon further request the defendant may obtain a transcript of such proceedings and copies of such exhibits. The trial of the case shall not be delayed because of the failure of a defendant to request the transcript. The availability of a grand jury report is governed by Criminal Rule 6.1.

(n) Finding and Return of Indictment.

(1) An indictment may be found only upon the concurrence of a majority of the total number of jurors comprising the grand jury when the grand jury is sworn and charged with instructions, after deducting the number not legally qualified.

(2) If an indictment is not found, the indictment shall be endorsed "not a true bill" and signed by the foreperson. If an indictment is found, the indictment shall be endorsed "a true bill" and signed by the foreperson.

(3) (i) If an indictment is endorsed "a true bill," the indictment shall be presented in open court and filed with the clerk where it shall be open to public inspection.

(ii) If an indictment is endorsed "not a true bill" and a complaint or information was previously filed in a district court, the indictment shall be presented in open court and filed with the clerk where it shall be open to public inspection.

(iii) If an indictment is endorsed "not a true bill" and no complaint or information was previously filed in district court, the indictment shall be filed with the clerk and held under seal.

(iv) The foreperson or deputy foreperson may present an indictment in open court without the presence of other grand jury members.

(4) If no indictment is found, the court shall hold the minutes, log notes, and record of the grand jury proceeding under seal. If an indictment is found, the log notes, transcript, and record of the grand jury proceeding will be confidential, as defined in Administrative Rule 37.5(c), except that the grand jury documents may be used by a party or counsel and by their staff, investigators, experts, and others as necessary for the preparation of the case. This paragraph does not preclude a party from attaching relevant portions of these documents to a pleading or motion, so long as victim and witness information is protected as provided in *AS 12.61.100--150*.

(5) The return of exhibits used during the grand jury proceedings is governed by Criminal Rule 26.1(h).

(o) Presentment.

(1) Whenever there is doubt from the evidence presented

(i) whether the facts constitute a crime, or

(ii) whether a defendant is subject to prosecution by reason of either a lapse of time or a former acquittal or conviction, then the grand jury by a concurrence of at least five members may make a presentment of the facts of the case to the court with a request for instructions on the law.

(2) The presentment shall be made by the foreperson in the presence of the grand jury.

(3) The presentment shall not mention the names of individuals. The presentment shall not be filed with the court, nor shall it be kept by the court beyond the time that the grand jury is discharged.

(4) When the presentment is made the court shall give such instructions on the law as it considers necessary.



(p) Defense Witnesses. -- Although the grand jury has no duty to hear evidence on the behalf of the defendant, it may do so.

(q) Sufficiency of Evidence. -- When the grand jury has reason to believe that other available evidence will explain away the charge, it shall order such evidence to be produced and for that purpose may require the prosecuting attorney to subpoena witnesses. An indictment shall not be found nor a presentment made upon the statement of a grand juror unless such grand juror is sworn and examined as a witness. The grand jury shall find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.

(r) Admissibility of Evidence.

(1) Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial. Except as stated in subparagraphs (2), (3), and (6), hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

(2) In a prosecution for an offense under *AS 11.41.410 -- 11.41.458*, hearsay evidence of a statement related to the offense, not otherwise admissible, made by a child who is the victim of the offense may be admitted into evidence before the grand jury if

(i) the circumstances of the statement indicate its reliability;

(ii) the child is under 10 years of age when the hearsay evidence is sought to be admitted;

(iii) additional evidence is introduced to corroborate the statement; and

(iv) the child testifies at the grand jury proceeding or the child will be available to testify at trial.

(3) Hearsay evidence related to the offense, not otherwise admissible, may be admitted into evidence before the grand jury if

(i) the individual presenting the hearsay evidence is a peace officer involved in the investigation; and

(ii) the hearsay evidence consists of the statement and observations made by another peace officer in the course of an investigation; and

(iii) additional evidence is introduced to corroborate the statement.

(4) If the testimony presented by a peace officer under paragraph (3) of this section is inaccurate because of intentional, grossly negligent, or negligent misstatements or omissions, then the court shall dismiss an indictment resulting from the testimony if the defendant shows that the inaccuracy prejudices substantial rights of the defendant.

(5) In this section "statement" means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

(6) In a prosecution for driving while intoxicated under *AS 28.35.030(n)* or for refusal to submit to a chemical test under *AS 28.35.032(p)*, hearsay evidence received through the Alaska Public Safety Information Network or from other government agencies of prior convictions of driving while intoxicated or refusal to submit to a chemical test may be presented to the grand jury.

(s) Excusing Grand Jurors. -- A seated juror may be excused for a particular case, permanently excused, or temporarily excused under the following circumstances:

(1) The prosecutor shall excuse a juror for a particular case when the juror informs the prosecutor that the juror cannot be fair or impartial in deciding that case. The prosecutor may ask the presiding judge to impanel an alternate.

(2) If the prosecutor is made aware of a grand juror's potential prejudice or bias that could affect the grand jury's impartial deliberations, or if the prosecutor seeks to challenge a juror for cause, the prosecutor shall present the information as to prejudice or bias or the challenge to the presiding judge. The judge shall provide the juror with notice of the prosecutor's action and shall question the juror concerning the potential bias or challenge. After hearing from the juror, the judge may request additional information from the prosecutor, other jurors, or other sources. If potential bias or cause is shown, the judge may excuse the juror permanently or for a particular case. The judge may impanel an alternate juror in place of the juror excused. If no potential bias or cause is shown, the judge shall allow the juror to remain and may take other appropriate action.

(3) The presiding judge may excuse a juror temporarily because of illness or a personal or business matter that requires the juror's attention. The presiding judge may delegate this authority to another judicial officer.

(4) An alternate juror must be present during the presentation of all evidence related to that case in order to vote on the proposed bill.

(t) Delegation of Duties. -- Whenever a superior court is sitting other than where the presiding judge is sitting, or the presiding judge is unavailable, the presiding judge may delegate duties under this rule to another judicial officer. However, the presiding judge may delegate duties under Criminal Rule 6.1 only to another superior court judge.

(u) Telephonic Testimony.

(1) A witness may participate telephonically in grand jury proceedings if the witness:

(A) would be required to travel more than 50 miles to the situs of the grand jury;  
or

(B) lives in a place from which people customarily travel by air to the situs of the grand jury.

(2) A witness who is not entitled to participate telephonically under subparagraph (1) may participate telephonically with approval of the presiding judge of the judicial district, or the presiding judge's designee. A motion to allow telephonic testimony under this subparagraph may be ex parte and shall be accompanied by an affidavit of the prosecuting attorney that states the reason telephonic testimony is requested.

(3) If a witness participates telephonically in grand jury proceedings, after the witness is sworn, the prosecuting attorney shall require the witness to:

(A) state the location from which the witness is testifying; and

(B) verify

(i) that the witness' conversation cannot be overheard;

(ii) that no extension for the telephone from which the witness is testifying is in use; and

(iii) that the witness will notify the grand jury immediately if any person can overhear the witness' testimony or if the witness becomes aware that an extension for the telephone enters use during the testimony.

## **ARIZONA**

*Ariz R Crim P 12.8 (2015)*

### Rule 12.8. Record of proceedings before grand jury

a. Reporter. -- The presiding or impaneling judge shall assign a regularly appointed certified court reporter to record the proceedings before the grand jury, except its deliberations.

b. Foreman. -- The foreman of the grand jury shall keep a record of the numerical count of the grand jury vote for and against such indictment. The foreman's record of the vote from which an indictment is returned shall be transcribed and filed with the clerk of the superior court no later than 20 days following the return of the indictment and made available to the prosecution and defendant only.

c. Filing of the transcript and minutes. -- The certified court reporter's verbatim record of the proceedings from which an indictment is returned shall be transcribed and filed with the clerk of the superior court no later than 20 days following the return of the indictment and the certified transcript shall be made available to the prosecution and defendant only.

## ARKANSAS

*ACA § 16-85-501 (2015)*

### 16-85-501. Appointment of foreman and clerk.

**(a)** The court shall appoint one of the number of every grand jury as foreman.

**(b)** Every grand jury may appoint one of the members to be clerk, to preserve and keep minutes of their proceedings and of the evidence given before them.

**(1)** However, the presiding judge of the circuit court, at his or her discretion, may require the official court reporter in counties where provision is not otherwise made for a reporter to report the proceedings of the grand jury, to attend all or any sessions of the grand jury of the court, and to make reports of the proceedings of the grand jury at such sessions or such part of the proceedings as the judge of the court may direct, and to furnish to the prosecuting attorney, as promptly as practicable, transcribed, typewritten copies of all or such part of the proceedings so reported as the judge or the prosecuting attorney may request.

**(2)** Court reporters attending sessions of the grand jury shall be subject to the same penalties as are prescribed by law for any person divulging, except as authorized by law, any part of the proceedings of the grand jury.

**(3)** The official reporters of circuit courts are required to perform the duties imposed upon them in accordance with the provisions of this subsection, in addition to their other duties, and without additional compensation.

*ACA § 16-85-502 (2015)*

### 16-85-502. Minutes.

The minutes of the proceedings and evidence shall be delivered to the prosecuting attorney when directed by the grand jury.

*A.C.A. § 16-85-512 (2015)*

### 16-85-512. Persons permitted to be present.

No persons except the prosecuting attorney, the court reporter, and the witnesses under examination are permitted to be present while the grand jury is examining a charge, and no person whatever shall be present while the grand jury is deliberating or voting on a charge.

## CALIFORNIA

*Cal Pen Code § 938 (2015)*

### § 938. Stenographic reporter

**(a)** Whenever criminal causes are being investigated before the grand jury, it shall appoint a competent stenographic reporter. He shall be sworn and shall report in shorthand the testimony given in such causes and shall transcribe the shorthand in all cases where an indictment is returned or accusation presented.

**(b)** At the request of the grand jury, the reporter shall also prepare transcripts of any testimony reported during any session of the immediately preceding grand jury.

*Cal Pen Code § 938.1 (2015)*

### § 938.1. Stenographic record; Publication

**(a)** If an indictment has been found or accusation presented against a defendant, such stenographic reporter shall certify and deliver to the clerk of the superior court in the county an original transcription of the reporter's shorthand notes and a copy thereof and as many additional copies as there are defendants, other than fictitious defendants, regardless of the number of charges or fictitious defendants included in the same investigation. The reporter shall complete the certification and delivery within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time. The time shall not be extended more than 20 days. The clerk shall file the original of the transcript, deliver a copy of the transcript to the district attorney immediately upon receipt thereof and deliver a copy of such transcript to each such defendant or the defendant's attorney. If the copy of the testimony is not served as provided in this section, the court shall on motion of the defendant continue the trial to such time as may be necessary to secure to the defendant receipt of a copy of such testimony 10 days before such trial. If several criminal charges are investigated against a defendant on one investigation and thereafter separate indictments are returned or accusations presented upon said several charges, the delivery to such defendant or the defendant's attorney of one copy of the transcript of such investigation shall be a compliance with this section as to all of such indictments or accusations.

**(b)** The transcript shall not be open to the public until 10 days after its delivery to the defendant or the defendant's attorney. Thereafter the transcript shall be open

to the public unless the court orders otherwise on its own motion or on motion of a party pending a determination as to whether all or part of the transcript should be sealed. If the court determines that there is a reasonable likelihood that making all or any part of the transcript public may prejudice a defendant's right to a fair and impartial trial, that part of the transcript shall be sealed until the defendant's trial has been completed.

## **COLORADO**

*Colo Crim P 6.4 (2015)*

### Rule 6.4. Reporting of Proceedings.

A certified or authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. The reporter's notes and any transcripts which may be prepared shall be preserved, sealed, and filed with the court. No release or destruction of the notes or transcripts shall occur without prior court approval.

*Colo Crim P 6.9 (2015)*

### Rule 6.9. Testimony.

(a)

Release to Prosecutor. Upon application by the prosecutor, the court, for good cause, may enter an order to furnish to the prosecutor transcripts of grand jury testimony, minutes, reports, or exhibits relating to them.

(b)

Release to Witness. Upon application by the prosecutor, or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of his own grand jury testimony, or minutes, reports, or exhibits relating to them.

(c)

Limitations on Release. An order to furnish transcripts of grand jury testimony, minutes, reports, or exhibits under this rule shall specify the person or persons who may be granted access to such material upon its release. Such order shall also specify any limitations which the court finds should be imposed on the use to be

made of such material by any person or persons, after giving due consideration to the provisions of Rule 6.3. Such order shall also provide that release of such material shall not be made by the clerk of the court until the filing of an oath of affirmation of acceptance by the person receiving such material of the restrictions and limitations which are specified by the court under this paragraph.

(d)

Indicted Defendant's Discovery Rights. Nothing herein shall limit the right of an indicted defendant to discovery under the rules of criminal procedure.

## CONNECTICUT

*Conn Gen Stat § 54-45a (2014)*

Sec. 54-45a. Record of grand jury proceedings. Transcripts.

**(a)** In any grand jury proceeding ordered pursuant to the provisions of *section 54-45*, the official stenographer of the Superior Court or his assistant shall make a record of the proceedings excluding the deliberations, which shall be confidential and filed with the court. Access to the transcript shall be available only to the prosecutorial official or any person accused of crime as a result of the grand jury investigation or the accused person's attorney. The prosecutorial official or the person accused of a crime as a result of such grand jury investigation or the accused person's attorney may obtain a copy of the transcript by paying for it.

**(b)** The transcript of such proceedings may not be used as evidence in any proceeding against the accused except for the purpose of impeaching a witness, attacking the credibility of a witness or proving inconsistent statements of a witness. The transcript may also be used as evidence in a prosecution for perjury committed by a witness while giving such testimony.

## DELAWARE

*Del Super Ct Crim R 6 (2015)*

Rule 6. The grand jury

(a) Summoning grand juries. -- The court shall order one or more grand juries to be summoned at such time as the public interest requires.

(b) Objections to grand jury and to grand jurors.

(1) Challenges. -- The attorney general or a defendant who has been held to answer in Superior Court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified.

(2) Motion to dismiss. -- A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. It shall be made in the manner prescribed in *10 Del. C. § 4512* and shall be granted under the conditions prescribed in that statute. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that the requisite number of jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) Foreperson and deputy foreperson. -- The court shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the prothonotary, but the record shall not be made public except on order of the court. During the absence of the foreperson, the deputy foreperson shall act as foreperson.

(d) Who may be present. -- The attorney general, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(e) Recording and disclosure of proceedings.

(1) Recording of proceedings. -- Proceedings, except when the grand jury is deliberating or voting, may be recorded stenographically or by an electronic recording device only with the approval of the court.

(2) General rule of secrecy. -- A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, the attorney general, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

(3) Exceptions.

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to --



(i) The attorney general for use in the performance of such attorney's duty; and

(ii) Such government personnel (including personnel of a state or of the federal government) as are deemed necessary by the attorney general to assist in the performance of such attorney's duty to enforce the criminal law.

(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney general in the performance of such attorney's duty to enforce the criminal law. The attorney general shall promptly provide Superior Court, in the county before which was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made, and shall certify that the attorney has advised such persons of their obligation of secrecy under this rule.

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made --

(i) When so directed by the court preliminarily to or in connection with a judicial proceeding;

(ii) When permitted by the court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(iii) When the disclosure is made by the attorney general to another grand jury;  
or

(iv) When permitted by the court at the request of the attorney general, upon a showing that such matters may disclose a violation of state or federal criminal law, to an appropriate official of a state or of the federal government for the purpose of enforcing such law.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(D) A petition for disclosure pursuant to subdivision (e)(3)(C)(i) shall be filed in the county where the grand jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the state, the petitioner shall serve written notice of the petition upon (i) the attorney general, (ii) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and to be heard.

(4) Sealed indictments. -- The judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon the prothonotary shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

(5) Closed hearing. -- Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(6) Sealed records. -- All records relating to grand jury proceedings shall be kept under seal, unless the court orders disclosure.

(f) Finding and return of indictment. -- An indictment may be found only upon the concurrence of the requisite number of jurors in accordance with *10 Del. C. § 4505*. The indictment shall be returned by the grand jury to a judge in open court. If a complaint or information is pending against the defendant and the requisite number of jurors do not concur in finding an indictment, the foreperson shall so report to a judge in writing forthwith by marking the proposed indictment "ignored."

(g) Discharge and excuse. -- Grand jurors shall serve until discharged by the court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

## FLORIDA

*Fla Stat 905.17 (2014)*

### § 905.17. Who may be present during session of grand jury.

**(1)** No person shall be present at the sessions of the grand jury except the witness under examination, one attorney representing the witness for the sole purpose of advising and consulting with the witness, the state attorney and her or his assistant state attorneys, designated assistants as provided for in *s. 27.18*, the court reporter or stenographer, and the interpreter. The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. The notes, records, and transcriptions are confidential and exempt from the provisions of *s. 119.07(1)* and *s. 24(a), Art. I of the State Constitution* and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to *s. 905.27*.

**(2)** The witness may be represented before the grand jury by one attorney. This provision is permissive only and does not create a right to counsel for the grand jury witness. The attorney for the witness shall not be permitted to address the grand jurors, raise objections, make arguments, or otherwise disrupt proceedings before the grand jury. The attorney for the witness shall be permitted to advise and counsel

the witness and shall be subject to the provisions of s. 905.27 in the same manner as all who appear before the grand jury. An attorney or law firm may not represent more than one person or entity in an investigation before the same grand jury or successive grand juries in the same investigation.

**(3)** No person shall be present while the grand jurors are deliberating or voting, except that an interpreter appointed pursuant to s. 90.6063(2) may be present after swearing to refrain from personal interjection and to uphold the secrecy of the proceeding.

**(4)** An intentional violation of the provisions of this section shall constitute indirect criminal contempt of court. Further, and in addition to any contempt sanction, if the court determines that the attorney for the witness has violated any of the provisions of subsection (2), then the court may take such measures as are necessary to ensure compliance with subsection (2), including exclusion of the offending attorney from the grand jury room.

**(5)** This section does not apply to proceedings of the statewide grand jury created in s. 905.33.

*Fla Stat 905.27 (2014)*

§ 905.27. Testimony not to be disclosed; exceptions.

**(1)** A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the grand jury shall not disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of:

**(a)** Ascertaining whether it is consistent with the testimony given by the witness before the court;

**(b)** Determining whether the witness is guilty of perjury; or

**(c)** Furthering justice.

**(2)** It is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a court proceeding. When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in which such criminal case is pending, and by the prosecuting attorney to his or her assistants, legal associates, and employees, and to the defendant and the defendant's attorney, and by the latter to his or her legal associates and employees. When such disclosure is ordered by a court

pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

**(3)** Nothing in this section shall affect the attorney-client relationship. A client shall have the right to communicate to his or her attorney any testimony given by the client to the grand jury, any matters involving the client discussed in the client's presence before the grand jury, and any evidence involving the client received by or proffered to the grand jury in the client's presence.

**(4)** Persons convicted of violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, or by fine not exceeding \$ 5,000, or both.

**(5)** A violation of this section shall constitute criminal contempt of court.

*Fla Stat 905.28 (2014)*

§ 905.28. Publication of report or presentment; motion to repress.

**(1)** A report or presentment of the grand jury relating to an individual which is not accompanied by a true bill or indictment is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be made public or be published until the individual concerned has been furnished a copy thereof and given 15 days to file with the circuit court a motion to repress or expunge the report or that portion which is improper and unlawful.

**(2)** Any such motion, whether granted or denied, shall automatically act as a stay of public announcement of such report, or portion thereof, until the circuit court's ruling on the motion is either affirmed or denied by the district court of appeal or, if no appeal is taken, until expiration of the period within which an appeal could have been taken.

## **GEORGIA**

*OCGA 15-12-83 (2014)*

§ 15-12-83. Attendance of stenographer at grand jury proceeding; use of recording device in lieu of stenographer

(a) This Code section shall apply to all counties of this state which according to the United States decennial census of 1970 or any future such census have a population of 150,000 or more.

(b) In any county of this state referred to in subsection (a) of this Code section, a stenographer is authorized to be present and in attendance upon the grand jury while any witness is being examined by the grand jury. Before attending the grand jury, the stenographer shall take the following oath:

"I do solemnly swear that I will keep secret all things and matters coming to my knowledge while in attendance upon the grand jury, so help me God."

(c) The district attorney of the circuit in which the county is located shall appoint the stenographer and fix the compensation therefor, such compensation to be paid by the county.

(d) The stenographer is authorized to take and transcribe the testimony or any part of the testimony of any witness who testifies before the grand jury and to furnish the transcript of testimony to the grand jury or the district attorney. The stenographer shall be incompetent to testify at any hearing or trial concerning any matter or thing coming to the knowledge of the stenographer while in attendance upon the grand jury.

(e) In any county of this state having a population of 200,000 or more according to the United States decennial census of 1970 or any future such census, a recording device may be used in lieu of the stenographer provided for in subsection (a) of this Code section. Any person transcribing testimony from such recording shall be incompetent to testify at any hearing or trial concerning any matter or thing coming to the knowledge of the person from the recordings.

*OCGA 17-7-52 (2014)*

§ 17-7-52. Procedure for indictment of peace officer for crime in performance of duties; notification; rights of officer

(a) Before an indictment against a present or former peace officer charging the officer with a crime which is alleged to have occurred while he or she was in the performance of his or her duties is returned by a grand jury, the officer shall be notified of the contemplated action by the district attorney of the county wherein the grand jury shall convene and the officer shall be afforded the rights provided in *Code Section 45-11-4*.

(b) The requirements of subsection (a) of this Code section shall apply to all prosecutions, whether for misdemeanors or felonies, and no such prosecution shall proceed either in state or superior court without a grand jury indictment.

# HAWAII

## *Haw R Penal P Rule 6 (2015)*

### Rule 6. Grand jury.

#### (a) Summoning grand juries.

Each circuit court shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of 16 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.

#### (b) Objections to grand jury and grand jurors.

##### (1) Challenges.

The prosecutor may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be heard by the court.

##### (2) Motion to dismiss.

A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section (c) of this rule that, after deducting the number not legally qualified, not less than three-fourths but in no event less than 8 of the jurors present concurred in finding the indictment.

#### (c) Foreperson and deputy foreperson.

The court shall appoint one of the jurors to be foreperson and another to be deputy foreperson and may remove either of them for cause. The foreperson shall have the power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the foreperson shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreperson, the deputy foreperson shall act as foreperson.

#### (d) Who may be present.

The prosecutor, the independent grand jury counsel, the witness under examination, and interpreters when needed, may be present while the grand jury is in session. An official reporter or operator of a recording device shall be present and shall fully record all evidence presented to and all statements made before the grand jury. No person other than the jurors may be present while the grand jury is deliberating or voting.

(e) Secrecy of proceedings and disclosure.

(1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the prosecutor for use in the performance of the prosecutor's duties. Otherwise, a juror, prosecutor, interpreter, reporter or 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 preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, subject, however, to the provisions of subsection (e)(2) of this rule. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

(2) After indictment is returned against a defendant, the defendant shall, on motion to the court and subject to payment therefor, have the right to a transcript of that portion of the grand jury proceedings which relates to the offense charged in the indictment; subject, however, to regulation by the court under Rule 16(e)(4).

(f) Finding and return of indictment.

Eight members shall constitute a quorum. An indictment may be found only upon the concurrence of three-fourths, but in no event fewer than 8 of the jurors present. The indictment shall be returned by the grand jury through its foreperson to a judge in open court. If the defendant is in custody or has given bail and the required number of jurors do not concur in finding an indictment, the grand jury through its foreperson shall so report to the court in writing forthwith. Evidence supporting a superseding indictment shall be considered by the same grand jury panel that returned the original indictment, and shall be found only upon the concurrence of three-fourths, but in no event fewer than 8 of the jurors who considered the original indictment. A grand jury panel considering a superseding indictment may consider any evidence presented to support its original indictment. In regard to both an original indictment and a superseding indictment, evidence of a clearly exculpatory nature known to the prosecution shall be disclosed to the grand jury. In the event that the term of the grand jury that returned the original indictment has expired, a new indictment may be presented to another grand jury.

(g) Discharge and excuse.

The grand jury shall serve for a term as provided by law. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(h) Oath or affirmation.

Substantially the following oath shall be administered to the grand jurors:

"You, and each of you, do solemnly swear or affirm that you will diligently inquire and make true determinations of all matters and things presented to you or which shall otherwise come to your knowledge; that you will indict no one through envy, hatred, or malice, nor leave anyone unindicted through fear, favor, affection, gain, reward or hope therefor, but will determine all things truly, as they come to your knowledge, according to the best of your understanding; and that you will keep secret matters occurring before you, except as you may be permitted to disclose the same by law or order of the court."

## **IDAHO**

### *ICR Rule 6.3 (2015)*

#### Rule 6.3. Transcript of grand jury proceedings.

##### (a) Reporting Grand Jury Proceedings.

All proceedings of the grand jury, except deliberations, shall be recorded, either stenographically or electronically.

##### (b) Record of Proceedings.

The district judge or the presiding juror shall designate someone to report or electronically record all of the proceedings of the grand jury, except its deliberations. Such person shall be sworn to correctly report all of such proceedings and not to divulge any of such information to any person except on order of the district judge. Upon taking such an oath, such person shall be permitted to attend all sessions, except deliberations, of the grand jury. Upon the conclusion of each matter presented to the grand jury the court clerk shall seal the record of the grand jury proceedings which shall not be examined by any person or transcribed except upon order of the district judge.

##### (c) Availability of Record of Grand Jury Proceedings.

The district judge by motion shall permit a prosecuting attorney, a person charged in an indictment or the attorney for the person charged, or a person charged with perjury by reason of the person's testimony before the grand jury to listen to the record of the proceedings of the grand jury or to obtain a transcript of such proceedings, in the same manner as a transcript of a preliminary hearing. The district judge may place conditions upon the use, dissemination or publication of the proceedings of the grand jury, and any violation of any such condition by a party granted access to the record shall constitute contempt of the order of the district judge.



*ICR Rule 6.4 (2015)*

Rule 6.4. Secrecy and confidentiality of grand jury proceedings.

(a) Who May be Present at Grand Jury Sessions.

The grand jury may, at all reasonable times, request the presence and advice of the district judge but unless such advice is asked, the district judge shall not be present during any session of the grand jury after it has been impaneled. No other person shall be permitted to be present during the sessions of the grand jury except:

(1) Jurors of the grand jury.

(2) The prosecuting attorney of the county in which the grand jury is sitting, or a designated deputy or specially appointed deputy.

(3) A witness physically present before the grand jury and under questioning and such person requested by the prosecuting attorney as authorized by *section 19-3023, Idaho Code*.

(4) The person designated by the district judge or the presiding juror to report the proceedings.

(5) An interpreter designated by the district judge or presiding juror and sworn to correctly interpret the proceedings and sworn to secrecy.

(b) Presence of Persons During Jury Deliberations Prohibited.

No person other than the acting grand jurors shall be permitted to be present during the deliberations of the grand jury.

(c) Secrecy of Proceedings and Disclosure.

Every member of the grand jury must keep secret whatever was said or done in the grand jury proceedings and which manner each grand juror may have voted on a matter before them; but a grand juror may be required by the district judge to disclose matters occurring before the grand jury which may constitute grounds for dismissal of an indictment or grounds for a challenge to a juror or the array of jurors. No other person present in a grand jury proceeding shall disclose to any other person what was said or done in the proceeding, except by order of any court for good cause shown.

(d) Disclosure of Indictment.

The court may seal the indictment and while sealed, no person shall disclose the finding of the indictment.

# ILLINOIS

725 ILCS 5/112-6 (2014)

## § 725 ILCS 5/112-6. Secrecy of proceedings

Sec. 112-6. Secrecy of proceedings. (a) Only the State's Attorney, his reporter and any other person authorized by the court or by law may attend the sessions of the Grand Jury. Only the grand jurors shall be present during the deliberations and vote of the Grand Jury. If no reporter is assigned by the State's Attorney to attend the sessions of the Grand Jury, the court shall appoint such reporter.

(b) Matters other than the deliberations and vote of any grand juror shall not be disclosed by the State's Attorney, except as otherwise provided for in subsection (c). The court may direct that a Bill of Indictment be kept secret until the defendant is in custody or has given bail and in either event the clerk shall seal the Bill of Indictment and no person shall disclose the finding of the Bill of Indictment except when necessary for the issuance and execution of a warrant.

(c)(1) Disclosure otherwise prohibited by this Section of matters occurring before the Grand Jury, other than its deliberations and the vote of any grand juror, may be made to:

a. a State's Attorney for use in the performance of such State's Attorney's duty; and

b. such government personnel as are deemed necessary by the State's Attorney in the performance of such State's Attorney's duty to enforce State criminal law.

(2) Any person to whom matters are disclosed under paragraph (1) of this subsection (c) shall not use the Grand Jury material for any purpose other than assisting the State's Attorney in the performance of such State's Attorney's duty to enforce State criminal law. The State's Attorney shall promptly provide the court, before which was impaneled the Grand Jury whose material has been disclosed, with the names of the persons to whom such disclosure has been made.

(3) Disclosure otherwise prohibited by this Section of matters occurring before the Grand Jury may also be made when the court, preliminary to or in connection with a judicial proceeding, directs such in the interests of justice or when a law so directs.

(d) Any grand juror or officer of the court who discloses, other than to his attorney, matters occurring before the Grand Jury other than in accordance with the provisions of this subsection or Section 112-7 [725 ILCS 5/112-7] shall be punished as a contempt of court, subject to proceedings in accordance to law.

725 ILCS 5/112-7 (2014)

§ 725 ILCS 5/112-7. Transcript

A transcript shall be made of all questions asked of and answers given by witnesses before the grand jury.

**INDIANA**

*Burns Ind Code Ann 35-34-2-10 (2014)*

35-34-2-10. Disclosure of grand jury proceedings -- Penalty -- Production of transcripts.

(a) Except when required to do so by law, a person who has been present at a grand jury proceeding and who knowingly or intentionally discloses:

- (1) Any evidence or testimony given or produced;
- (2) What a grand juror said; or
- (3) The vote of any grand juror;

to any other person, except to a person who was also present or entitled to be present at that proceeding or to the prosecuting attorney or his representative, commits unauthorized disclosure of grand jury information, a Class B misdemeanor.

(b) The transcript of testimony of a witness before a grand jury may be produced only:

- (1) For the official use of the prosecuting attorney; or
- (2) Upon order of:
  - (A) The court which impaneled the grand jury;
  - (B) The court trying a case upon an indictment of the grand jury; or
  - (C) A court trying a prosecution for perjury;

but only after a showing of particularized need for the transcript.

# IOWA

## *Iowa R Crim P 2.3 (2015)*

### Rule 2.3 The grand jury.

2.3(1) Drawing grand jurors. At such times as prescribed by the chief judge of the district court in the public interest, the names of the twelve persons constituting the panel of the grand jury shall be placed by the clerk in a container, and after thoroughly mixing the same, in open court the clerk shall draw therefrom seven names, and the persons so drawn shall constitute the grand jury. Computer selection processes may be used to randomly draw the seven names. Should any of the persons so drawn be excused by the court or fail to attend on the day designated for their appearance, the clerk shall draw either manually or by use of a computer selection process additional names until the seven grand jurors are secured.

If the panel is insufficient to provide and maintain a grand jury of seven members, the panel shall be refilled from the jury box or computer selection process by the clerk of the court under direction of the court; additional grand jurors shall be selected until a grand jury of seven grand jurors is secured, and they shall be summoned in the manner as those originally drawn.

#### 2.3(2) Challenge to grand jury.

a. Challenge to array. A defendant held to answer for a public offense may, before the grand jury is sworn, challenge the panel or the grand jury, only for the reason that it was not composed or drawn as prescribed by law. If the challenge be sustained, the court shall thereupon proceed to take remedial action to compose a proper grand jury panel or grand jury.

b. Challenge to individual jurors. A challenge to an individual grand juror may be made before the grand jury is sworn as follows:

(1) By the state or the defendant, because the grand juror does not possess the qualifications required by law.

(2) By the state only because:

1. The juror is related either by affinity or consanguinity nearer than in the fifth degree, or stands in the relation of agent, clerk, servant, or employee, to any person held to answer for a public offense, whose case may come before the grand jury.

2. The juror is providing bail for anyone held to answer for a public offense, whose case may come before the grand jury.

3. The juror is defendant in a prosecution similar to any prosecution to be examined by the grand jury.

4. The juror is, or within one year preceding has been, engaged or interested in carrying on any business, calling, or employment the carrying on of which is a violation of law, and for which the juror may be indicted by the grand jury.

(3) By the defendant only because:

1. The juror is a complainant upon a charge against the defendant.

2. The juror has formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a true indictment upon the evidence submitted.

c. Decision by court. Challenges to the panel or to an individual grand juror shall be decided by the court.

d. Motion to dismiss. A motion to dismiss the indictment may be based on challenges to the array or to an individual juror, if the grounds for challenge which are alleged in the motion of the defendant have not previously been determined pursuant to a challenge asserted by the defendant pursuant to rule 2.3(2)(a) or 2.3(2)(b).

2.3(3) Discharging and summoning jurors.

a. Discharge. A grand jury, on the completion of its business, shall be discharged by the court. The grand jury shall serve until discharged by the court, and the regular term of service by a grand juror should not exceed one calendar year. However, when an investigation which has been undertaken by the grand jury is incomplete, the court may by order extend the eligibility of a grand juror beyond one year, to the completion of the investigation.

b. Summoning jurors. Upon order of the court the clerk shall issue a precept or precepts to the sheriff, commanding the sheriff to summon the grand juror or jurors. Upon a failure of a grand juror to obey such summons without sufficient cause, the grand juror may be punished for contempt.

c. Excusing jurors. If the court excuses a juror, the court may impanel another person in place of the juror excused. If the grand jury has been reduced to fewer than seven by reason of challenges to individual jurors being allowed, or from any other cause, the additional jurors required to fill the panel shall be summoned, first, from such of the twelve jurors originally summoned which were not drawn on the grand jury as first impaneled, and if they are exhausted the additional number required shall be drawn from the grand jury list. If a challenge to the array is allowed, a new grand jury shall be impaneled to inquire into the charge against the defendant in whose behalf the challenge to the array has been allowed, and they shall be summoned in the manner prescribed in this rule.

2.3(4) Oaths and procedure.

a. Foreman or forewoman. From the persons impaneled as grand jurors the court shall appoint a foreman or forewoman, or when the foreman or forewoman already appointed is discharged, excused, or from any cause becomes unable to act before the grand jury is finally discharged, an acting foreman or forewoman may be appointed.

The foreman or forewoman of the grand jury may administer the oath to all witnesses produced and examined before it.

b. Clerks, bailiffs and court attendants. The court may appoint as clerk of the grand jury a competent person who is not a member thereof. In addition the court may, if it deems it necessary, appoint assistant clerks of the grand jury. If no such appointments are made by the court, the grand jury shall appoint as its clerk one of its own number who is not its foreman or forewoman. In like manner the court may appoint bailiffs for the grand jury to serve with the powers of a peace officer while so acting.

c. Oaths administered to grand jury, clerk, bailiff, and court attendant. The following oath shall be administered to the grand jury: "Do each of you, as the grand jury, solemnly swear or affirm that you will diligently inquire and true presentment make of all public offenses against the people of this state, triable on indictment within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred, or ill will, nor leave any unrepresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments that you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding?"

Any clerk, assistant clerk, bailiff, or court attendant appointed by the court must be given the following oath: "Do you solemnly swear that you will faithfully and impartially perform the duties of your office, that you will not reveal to anyone its proceedings or the testimony given before it and will abstain from expressing any opinion upon any question before it, to or in the presence or hearing of the grand jury or any member thereof?"

d. Secrecy of proceedings. Every member of the grand jury, and its clerks, bailiffs and court attendants, shall keep secret the proceedings of that body and the testimony given before it, except as provided in rule 2.14. No such person shall disclose the fact that an indictment has been found except when necessary for the issuance and execution of a warrant or summons, and such duty of nondisclosure shall continue until the indicted person has been arrested. The prosecuting attorney shall be allowed to appear before the grand jury on his or her own request for the purpose of giving information or for the purpose of examining witnesses, and the grand jury may at all reasonable times ask the advice of the prosecuting attorney or the court. However, neither the prosecuting attorney nor any other officer or person except the grand jury may be present when the grand jury is voting upon the finding of an indictment.

e. Securing witnesses and records. The clerk of the court must, when required by the foreman or forewoman of the grand jury or prosecuting attorney, issue subpoenas including subpoenas duces tecum for witnesses to appear before the grand jury.

The grand jury is entitled to free access at all reasonable times to county institutions and places of confinement, and to the examination without charge of all public records within the county.

f. Minutes. The clerk of the grand jury shall take and preserve minutes of the proceedings and of the evidence given before it, except the votes of its individual members on finding an indictment.

g. Evidence for defendant. The grand jury is not bound to hear evidence for the defendant, but may do so, and must weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it may order the same produced.

h. Refusal of witness to testify. When a witness under examination before the grand jury refuses to testify or to answer a question, it shall proceed with the witness before a district judge, and the foreman or forewoman shall then distinctly state before a district judge the question and the refusal of the witness, and if upon hearing the witness the court decides that the witness is bound to testify or answer the question propounded, the judge shall inquire whether the witness persists in refusing and, if the witness does, shall proceed with the witness as in cases of similar refusal in open court.

i. Effect of refusal to indict. If, upon investigation, the grand jury refuses to find an indictment against one charged with a public offense, it shall return all papers to the clerk, with an endorsement thereon, signed by the foreman or forewoman, to the effect that the charge is ignored. Thereupon, the district judge must order the discharge of the defendant from custody if in jail, and the exoneration of bail if bail be given. Upon good cause shown, the district judge may direct that the charge again be submitted to the grand jury. Such ignoring of the charge does not prevent the cause from being submitted to another grand jury as the court may direct; but without such direction, it cannot again be submitted.

j. Duty of grand jury. The grand jury shall inquire into all indictable offenses brought before it which may be tried within the county, and present them to the court by indictment. The grand jury shall meet at times specified by order of a district judge. In addition to those times, the grand jury shall meet at the request of the county attorney or upon the request of a majority of the grand jurors.

It is made the special duty of the grand jury to inquire into:

(1) The case of every person imprisoned in the detention facilities of the county on a criminal charge and not indicted.

(2) The condition and management of the public prisons, county institutions and places of detention within the county.

(3) The unlawful misconduct in office in the county of public officers and employees.

k. Appearance not required. A person under the age of ten years shall not be required to personally appear before a grand jury to testify against another person related to the person or another person who resided with the person at the time of the action which is the subject of the grand jury's investigation, unless there exists a special order of the court finding that the interests of justice require the person's

appearance and that the person will not be disproportionately traumatized by the appearance.

*Iowa R Crim P 2.13 (2015)*

Rule 2.13 Depositions.

2.13(1) By defendant. A defendant in a criminal case may depose all witnesses listed by the state on the indictment or information or notice of additional witnesses in the same manner and with like effect and with the same limitations as in civil actions except as otherwise provided by statute and these rules. Depositions before indictment or trial information is filed may only be taken with leave of court.

When the state receives notice that a deposition will be taken of a witness listed on the indictment, information or notice of additional witnesses, the state may object that the witness (a) is a foundation witness or (b) has been adequately examined on preliminary hearing. The court shall immediately determine whether discovery of the witness is necessary in the interest of justice and shall allow or disallow the deposition.

2.13(2) Special circumstances.

a. Whenever the interests of justice and the special circumstances of a case make necessary the taking of the testimony of a prospective witness not included in rule 2.13(1) or 2.13(3), for use at trial, the court may upon motion of a party and notice to the other parties order that the testimony of the witness be taken by deposition and that any designated book, paper, document, record, recording, or other material, not privileged, be produced at the same time and place. For purposes of this subsection, special circumstances shall be deemed to exist and the court shall order that depositions be taken only upon a showing of necessity arising from either of the following:

(1) The information sought by way of deposition cannot adequately be obtained by a bill of particulars or voluntary statements.

(2) Other just cause necessitating the taking of the deposition.

b. The court may upon motion of a party and notice to the other parties order that the testimony of a victim or witness who is a child, as defined in *Iowa Code section 702.5*, be taken by deposition for use at trial. Only the judge, parties, counsel, persons necessary to record the deposition, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the child may be present in the room with the child during the child's deposition.

The court may require a party be confined to an adjacent room or behind a screen or mirror that permits the party to see and hear the child during the child's deposition, but does not allow the child to see or hear the party. However, if a party is so confined, the court shall take measures to ensure that the party and counsel



can confer during the deposition and shall inform the child that the party can see and hear the child during deposition.

2.13(3) By state. At or before the time of the taking of a deposition by a defendant under rule 2.13(1) or 2.13(2), the defendant shall file a written list of the names and addresses of all witnesses expected to be called for the defense (except the defendant and surrebuttal witnesses), and the defendant shall have a continuing duty before and throughout trial promptly to disclose additional defense witnesses. Such witnesses shall be subject to being deposed by the state.

2.13(4) Failure to comply. If the defendant has taken depositions under rule 2.13(1) and does not disclose to the prosecuting attorney all of the defense witnesses (except the defendant and surrebuttal witnesses) at least nine days before trial, the court may order the defendant to permit the discovery of such witnesses, grant a continuance, or enter such other order as it deems just under the circumstances. It may, if it finds that no less severe remedy is adequate to protect the state from undue prejudice, order the exclusion of the testimony of any such witnesses.

2.13(5) Perpetuating testimony. A person expecting to be a party to a criminal prosecution may perpetuate testimony in the person's favor in the same manner and with like effect as may be done in expectation of a civil action.

2.13(6) Time of taking. Depositions shall be taken within 30 days after arraignment unless the period for taking is extended by the court for good cause shown.

## **KANSAS**

*KSA 22-3010 (2013)*

### 22-3010. Who may be present.

Prosecuting attorneys, special counsel employed by the grand jury, the witness under examination and such witness' counsel, interpreters when needed and, for the purpose of taking the evidence, the reporter for the grand jury, may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

*KSA 22-3012 (2013)*

### 22-3012. Secrecy of proceedings and disclosure.

(a) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror shall be made to the prosecuting attorney for use in the performance of such attorney's duties.

(b) Otherwise a juror, attorney, interpreter, reporter or any typist who transcribes recorded testimony shall not disclose matters occurring before the grand jury except, upon court order:

(1) The testimony of a witness before the grand jury may be disclosed to a defendant to determine whether it is consistent with testimony given before the court, but only upon a showing of good cause;

(2) evidentiary materials presented to one grand jury may be disclosed to a succeeding grand jury; and

(3) grand jury testimony by a defendant may be disclosed to such defendant, but only in the criminal action resulting from such testimony.

(c) No obligation of secrecy may be imposed upon any person except in accordance with this section. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

## **KENTUCKY**

*Ky R Cr Rule 5.16 (2014)*

### **Rule 5.16. Transcript of testimony.**

(1) The attorney for the Commonwealth shall cause all of the testimony before a grand jury to be recorded. For this purpose the attorney for the Commonwealth may appoint a stenographer to take in shorthand the testimony of witnesses or may cause the testimony to be taken by a recording device, but the record so made shall include the testimony of all witnesses. The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the attorney for the Commonwealth.

(2) Failure to have a record made, if required by paragraph (1) of this Rule 5.16, shall be ground for dismissal of the indictment unless the Commonwealth can show good cause for the failure. Mechanical failure of the recording device shall constitute good cause.

(3) The stenographer or operator of the recording device and any typist who transcribes the stenographer's notes or recordings shall be sworn by the court not to disclose any testimony or the names of any witnesses except to the attorney for the Commonwealth or when testifying in court, and except that any person indicted by the grand jury shall have a right to procure a transcript of any stenographic

report or a duplicate of any mechanical recording relating to his or her indictment or any part thereof upon payment of its reasonable cost.

## LOUISIANA

*La CCrP Art 433 (2015)*

### Art. 433. Persons present during grand jury sessions

A. (1) Only the following persons may be present at the sessions of the grand jury:

(a) The district attorney and assistant district attorneys or any one or more of them;

(b) The attorney general and assistant attorneys general or any one or more of them;

(c) The witness under examination;

(d) A person sworn to record the proceedings of and the testimony given before the grand jury; and

(e) An interpreter sworn to translate the testimony of a witness who is unable to speak the English language.

(2) An attorney for a target of the grand jury's investigation may be present during the testimony of said target. The attorney shall be prohibited from objecting, addressing or arguing before the grand jury; however he may consult with his client at anytime. The court shall remove such attorney for violation of these conditions. If a witness becomes a target because of his testimony, the legal advisor to the grand jury shall inform him of his right to counsel and cease questioning until such witness has obtained counsel or voluntarily and intelligently waived his right to counsel. Any evidence or testimony obtained under the provisions of this Subparagraph from a witness who later becomes a target shall not be admissible in a proceeding against him.

B. No person, other than a grand juror, shall be present while the grand jury is deliberating and voting.

C. A person who is intentionally present at a meeting of the grand jury, except as authorized by Paragraph A of this article, shall be in constructive contempt of court.

*La CCrP Art 434 (2015)*

Art. 434. Secrecy of grand jury meetings; procedures for crimes in other parishes

A. Members of the grand jury, all other persons present at a grand jury meeting, and all persons having confidential access to information concerning grand jury proceedings, shall keep secret the testimony of witnesses and all other matters occurring at, or directly connected with, a meeting of the grand jury. However, after the indictment, such persons may reveal statutory irregularities in grand jury proceedings to defense counsel, the attorney general, the district attorney, or the court, and may testify concerning them. Such persons may disclose testimony given before the grand jury, at any time when permitted by the court, to show that a witness committed perjury in his testimony before the grand jury. A witness may discuss his testimony given before the grand jury with counsel for a person under investigation or indicted, with the attorney general or the district attorney, or with the court.

B. Whenever a grand jury of one parish discovers that a crime may have been committed in another parish of the state, the foreman of that grand jury, after notifying his district attorney, shall make that discovery known to the attorney general. The district attorney or the attorney general may direct to the district attorney of another parish any and all evidence, testimony, and transcripts thereof, received or prepared by the grand jury of the former parish, concerning any offense that may have been committed in the latter parish, for use in such latter parish.

C. Any person who violates the provisions of this article shall be in constructive contempt of court.

*La RS 14:129.2 (2015)*

§ 14:129.2. Recording, listening to, or observing proceedings of grand or petit juries while deliberating or voting.

It shall be unlawful for any person knowingly and intentionally, by any means or device whatsoever:

(1) to record or attempt to record, the proceedings of any grand or petit jury in any court of the state of Louisiana while such jury is deliberating or voting; or

(2) to listen to or observe, or attempt to listen to or observe, the proceedings of

any grand or petit jury of which he is not a member in any court of the state of Louisiana while such jury is deliberating or voting.

Whoever violates the provisions of this Section shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

## **MAINE**

*Me R Crim P 6 (2014)*

### Rule 6. The Grand Jury

(a) Number of Grand Jurors. The grand jury shall consist of not less than 13 nor more than 23 jurors and a sufficient number of legally qualified persons shall be summoned to meet this requirement.

(b) Objections to Grand Jury and to Grand Jurors.

(1) Challenges. Either the attorney for the state or a defendant who has been held to answer may challenge an individual grand juror on the ground that the juror is not legally qualified or that a state of mind exists on the juror's part which may prevent the juror from acting impartially. All challenges must be in writing and allege the ground upon which the challenge is made, and such challenges must be made prior to the time the grand jurors commence receiving evidence at each session of the grand jury. If a challenge to an individual grand juror is sustained, the juror shall be discharged and the court may replace the juror from persons drawn or selected for grand jury service.

(2) Motion to Dismiss. A motion to dismiss the indictment may be based on objections to the array or, if not previously determined upon challenge, on the lack of legal qualifications of an individual juror or on the ground that a state of mind existed on the juror's part which prevented the juror from acting impartially, but an indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) Foreperson and Deputy Foreperson. The court shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the foreperson shall keep a record of the

number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record shall not be public except on order of the court. During the absence of the foreperson the deputy foreperson shall act as foreperson.

(d) Presence During Proceedings. While the grand jury is taking evidence, only the attorneys for the state, the witness under examination, and, when ordered by the court, a security officer, an interpreter, translator, court reporter, or operator of electronic recording equipment may be present. While the grand jury is deliberating or voting, only the jurors may be present.

(e) General Rule of Secrecy. A juror, attorney, security officer, interpreter, translator, court reporter, operator of electronic recording equipment, or any person to whom disclosure is made under this rule may not disclose matters occurring before the grand jury, except as otherwise provided in these rules or when so directed by the court. No obligation of secrecy may be imposed upon any person except in accordance with this rule. In the event an indictment is not returned, any stenographic notes and electronic backup, if any, of an official court reporter or tape or digital record of an electronic sound recording and any written record of information necessary for an accurate transcription prepared by the operator and any transcripts of such notes, tape or digital record shall be impounded by the court. The court may direct that an indictment be kept secret until the defendant is in custody or has given bail, and in that event the court shall seal the indictment and no person may disclose the finding of the indictment except when necessary for the issuance or execution of a warrant or summons. Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and any vote of any juror, may be made to:

(1) an attorney for the state in the performance of the duty of an attorney for the state to enforce the state's criminal laws;

(2) such staff members of an attorney for the state as are assigned to the attorney for the state and are reasonably necessary to assist an attorney for the state in the performance of the duty of an attorney for the state to enforce the state's criminal laws; and

(3) another state grand jury by an attorney for the state in the performance of the duty of an attorney for the state to enforce the state's criminal laws.

Any person to whom matters are disclosed under paragraphs (1) or (2) of subdivision (e) of this rule may not utilize that grand jury material for any purpose other than assisting the attorney for the state in the performance of such attorney's duty to enforce the state's criminal laws.

(f) Recording of Proceedings. Upon motion of the defendant or the attorney for the state, the court, in its discretion for good cause shown, may order that a court

reporter or operator of electronic recording equipment be present for the purpose of taking evidence. No person other than a court reporter or operator of electronic recording equipment shall be permitted to record any portion of the proceeding.

(g) Procedure for Preparation and Disclosure of Transcript. No transcript may be prepared of the record of the evidence presented to the grand jury without an order of the court. Upon motion of the defendant or the attorney for the state and upon a showing of particularized need, the court may order a transcript of the record of the evidence to be furnished to the defendant or the attorney for the state upon such terms and conditions as are just.

(1) Transcripts of the record of the evidence may also be furnished upon such terms and conditions as are just:

(A) when ordered by the court preliminarily to or in connection with a judicial proceeding and upon a showing of particularized need; or

(B) when ordered by the court at the request of an attorney for the state to an appropriate official of another jurisdiction for the purpose of enforcing the criminal laws of another jurisdiction upon a showing that such disclosure may constitute evidence of a violation of the criminal laws of that other jurisdiction.

(2) A petition for disclosure pursuant to paragraph (1) of subdivision (g) shall be filed in the Superior Court where the grand jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the state, the petitioner shall serve written notice of the petition upon:

(A) the attorneys for the state who were present before the grand jury, or their designee;

(B) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding; and

(C) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard prior to disclosure of the transcript of the record of the evidence. The court shall order such a hearing to be closed to the extent necessary to prevent disclosure of matters occurring before the grand jury.

(3) If the judicial proceeding giving rise to the petition is before a court of another county, the Superior Court which convened the grand jury may transfer the disclosure hearing to the Superior Court of the county of the petitioning court, unless the court convening the grand jury may reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper. The Superior Court convening the grand jury may order transmitted to the Superior

Court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy.

(h) Disclosure for Certain Law Enforcement Purposes. Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and any vote of any grand juror, may be made to such law enforcement personnel (including personnel of the United States, another state or territory or subdivision of such) as are deemed necessary by an attorney for the state to assist in the performance of the duty of an attorney for the state to enforce the state's criminal laws. Any person to whom matters are disclosed under this subdivision may not utilize that grand jury material for any purpose other than assisting an attorney for the state in the performance of such attorney's duty to enforce the state's criminal laws. An attorney for the state shall promptly provide the Superior Court, which convened the grand jury whose material has been disclosed under this subdivision, with the names of the persons and agencies to whom such disclosure has been made, and shall certify that the attorney for the state has advised such persons of their obligation of secrecy under this rule.

(i) Finding and Return of Indictment. An indictment may be found only upon the concurrence of 12 or more jurors. The indictment shall be returned to the court by the grand jury or its foreperson or its deputy foreperson in open court. If the defendant is in custody or has given bail and 12 jurors do not concur in finding an indictment, the foreperson shall so report to the court in writing forthwith.

(j) Excuse. At any time for cause shown, the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused. No juror may participate in voting with respect to an indictment unless the juror shall have been in attendance at the presentation of all the evidence produced in favor of and adverse to the return of the indictment.

## MARYLAND

*Md Courts and Judicial Proceedings Code Ann 2-503 (2014)*

### § 2-503. Grand jury reporter

The jury judge for a county may order a court reporter to take and transcribe testimony given before a grand jury for the county for use as provided in § 8-416(c)(1) of this article.



*Md Courts and Judicial Proceedings Code Ann 8-416 (2014)*

§ 8-416. Record

(a) Duty of court reporter. -- A court reporter ordered to take testimony given before a grand jury shall take and transcribe the testimony.

(b) Transcript. --

(1) A court reporter shall provide, as requested, a transcript of testimony given before a grand jury for a county to the grand jury and State's Attorney for the county.

(2) Each transcript of testimony given before a grand jury for a county shall be kept in the custody of the State's Attorney for the county.

(3) Unless the circuit court for a county orders otherwise after hearing the State's Attorney for the county, neither the original nor a copy of the transcript of testimony given before a grand jury may be taken from the office of the State's Attorney for the county, other than for use of the grand jury or for production in court.

(4) On written order of the circuit court for a county, granted on written motion of the State's Attorney for the county, the State's Attorney may have the notes as to, and transcript of, grand jury testimony destroyed.

(c) Use. -- Except on written order of the circuit court for a county after hearing the State's Attorney for the county:

(1) A record of testimony given before a grand jury is for the exclusive use and benefit of the grand jury and the State's Attorney; and

(2) A court reporter may not:

(i) Allow any other governmental unit or person to read or have a copy of all or any part of the record; or

(ii) Disclose wholly or partly the character of the contents of the record to any other governmental unit or person.

*Md Courts and Judicial Proceedings Code Ann 8-507 (2014)*

§ 8-507. Grand jury secrecy

(a) Prohibited act. -- A person may not disclose any content of a grand jury proceeding.

(b) Penalties. -- A person who violates any provision of this section is guilty of a misdemeanor and, on conviction, subject to a fine not exceeding \$ 1,000 or imprisonment not exceeding 1 year or both.

(c) Reports. -- This section does not prevent:

- (1) A grand jury from submitting a report as required by law; or
- (2) Any other governmental unit or person making a disclosure authorized by law.

## **MASSACHUSETTS**

*ALM GL ch 212 23 (2015)*

§ 86. Stenographers -- Grand Juries -- Stenographic Notes and Transcripts of Testimony.

A justice of the superior court may, upon the request of the district attorney or, if the grand jury was convened upon the written request of the attorney general, upon the request of the attorney general, appoint a stenographer, who shall be sworn, and who shall take stenographic notes of such testimony given before the grand jury as he may direct, and shall provide him with a transcript fully written out of such part of said notes as he requires. Such notes or any transcripts thereof, other than such transcripts as may be required by said justice, shall be transmitted to the district attorney or the attorney general as the case may be, and he shall have the custody thereof. This section shall not authorize the taking of any statement or testimony of a grand juror. Transcription costs shall be paid as provided in section 88.

*ALM GL ch 277 1 (2015)*

§ 13D. Court Proceedings -- Distribution of Transcript of Grand Jury Proceeding.

(a) Whoever knowingly distributes or possesses with intent to distribute any transcript of grand jury testimony or any substantially verbatim description of grand jury testimony with the intent to impede, obstruct, delay or otherwise interfere with any criminal proceeding, or the participation of any victim, witness or juror in any stage of a trial, grand jury, or other criminal proceeding, or the continued participation of any person furnishing information to a criminal proceeding, or the continued participation of any person furnishing information to a criminal investigator relating to a violation of any criminal statute, \* shall be punished by imprisonment in a house of correction for not more than 2 1/2 years or in the state prison for not more than 5 years, or by a fine of not more than \$5,000, or both. Nothing in this subsection shall abridge any right protected by the First Amendment to the United States Constitution.

(b) Nothing in this section shall be construed so as to prohibit any person performing an official function in relation to the grand jury from disclosing a grand jury transcript or description thereof pursuant to Massachusetts Rules of Procedure or Federal Rule of Criminal Procedure 6.

(c) Any attorney representing a defendant in a criminal proceeding, including court appointed counsel, who receives a grand jury transcript or a description thereof related to such proceeding from a prosecutor, may provide the transcript or description to his client or any investigator employed by such attorney or another attorney employed by, or appointed by the court to represent, his client, unless such transfer would be in violation of a protective order from a court of competent jurisdiction. Such attorney may further disclose a grand jury transcript or description thereof related to such proceeding to assist in the legal defense of another defendant in a criminal proceeding, unless such transfer would be in violation of a protective order from a court of competent jurisdiction.

(d) Upon motion of the commonwealth and after hearing, a court may issue a protective order prohibiting defense counsel from distributing grand jury transcripts to a criminal defendant, if the commonwealth demonstrates that the defendant is accused of a violent crime, as defined in section 121 of chapter 140, and that there is a reason to believe, based on specific and articulable facts including, but not limited to, the defendant's past history of violence and the nature of the charges against the defendant, that the defendant poses a threat to a witness or victim. The defendant shall have a right to cross examine any commonwealth witness. In making a determination relative to the issuance of a protective order under this section, the court shall consider whether the defendant has an exceptional need to receive such grand jury transcripts.

(e) Any grand jury transcript or document citing or describing grand jury testimony filed with any court shall be filed and maintained under seal, unless the paper is filed in a criminal prosecution for perjury before a grand jury.

§ 14A. Presence of Counsel at Grand Jury Proceedings.

Any person shall have the right to consult with counsel and to have counsel present at every step of any criminal proceeding at which such person is present, including the presentation of evidence, questioning, or examination before the grand jury; provided, however, that such counsel in a proceeding before a grand jury shall make no objections or arguments or otherwise address the grand jury or the district attorney. No witness may refuse to appear for reason of unavailability of counsel for that witness.

*ALM Super Ct Rule 63 (2015)*

Rule 63. Court Reporter in Grand Jury Proceedings

Stenographic notes of all testimony given before any grand jury shall be taken by a court reporter, who shall be appointed by a justice of the superior court and who shall be sworn. Unless otherwise ordered by the court, the court reporter shall furnish transcripts of said notes only as required by the district attorney or attorney general.

*ALM G Evid 1101 (2015)*

Section 1101. Applicability of Evidentiary Sections

(a) Proceedings to Which Applicable. Except as provided in Subsection (c), these sections apply to all actions and proceedings in the courts of the Commonwealth.

(b) Law of Privilege. The sections with respect to privileges apply at all stages of all actions, cases, and proceedings.

(c) Sections Inapplicable. These sections (other than those with respect to privileges) do not apply in the following situations:

(1) Preliminary Determinations of Fact. The determination of questions of fact preliminary to the admissibility of evidence when the issue is to be determined by the court as addressed in Section 104(a), Preliminary Questions: Determinations Made by the Court.

(2) Grand Jury. Proceedings before grand juries.

(3) Miscellaneous Proceedings. Most administrative proceedings; bail proceedings; bar discipline proceedings; civil motor vehicle infraction hearings; issuance of process (warrant, complaint, capias, summons); precomplaint, show cause hearings; pretrial dangerousness hearings; prison disciplinary hearings; probation violation

hearings; restitution hearings; sentencing; sexual offender registry board hearings; small claims sessions; and summary contempt proceedings.

(d) Motions to Suppress. The law of evidence does not apply with full force at motion to suppress hearings. As to the determination of probable cause or the justification of government action, out-of-court statements are admissible.

## **MICHIGAN**

*MCR 6.107 (2015)*

### Rule 6.107 Grand Jury Proceedings.

(A) Right to Grand Jury Records. Whenever an indictment is returned by a grand jury or a grand juror, the person accused in the indictment is entitled to the part of the record, including a transcript of the part of the testimony of all witnesses appearing before the grand jury or grand juror, that touches on the guilt or innocence of the accused of the charge contained in the indictment.

(B) Procedure To Obtain Records.

(1) To obtain the part of the record and transcripts specified in subrule (A), a motion must be addressed to the chief judge of the circuit court in the county in which the grand jury issuing the indictment was convened.

(2) The motion must be filed within 14 days after arraignment on the indictment or at a reasonable time thereafter as the court may permit on a showing of good cause and a finding that the interests of justice will be served.

(3) On receipt of the motion, the chief judge shall order the entire record and transcript of testimony taken before the grand jury to be delivered to the chief judge by the person having custody of it for an in camera inspection by the chief judge.

(4) Following the in camera inspection, the chief judge shall certify the parts of the record, including the testimony of all grand jury witnesses that touches on the guilt or innocence of the accused, as being all of the evidence bearing on that issue contained in the record, and have two copies of it prepared, one to be delivered to the attorney for the accused, or to the accused if not represented by an attorney, and one to the attorney charged with the responsibility for prosecuting the indictment.

(5) The chief judge shall then have the record and transcript of all testimony of grand jury witnesses returned to the person from whom it was received for disposition according to law.

*MCLS 767.3 (2014)*

§ 767.3. Proceedings before trial; investigation of suspected offenses by judge of court of record; inquiry; witnesses; participants in inquiry, disqualification from appointment or election.

Sec. 3. Whenever by reason of the filing of any complaint, which may be upon information and belief, or upon the application of the prosecuting attorney or attorney general, any judge of a court of law and of record shall have probable cause to suspect that any crime, offense or misdemeanor has been committed within his jurisdiction, and that any persons may be able to give any material evidence respecting such suspected crime, offense or misdemeanor, such judge in his discretion may make an order directing that an inquiry be made into the matters relating to such complaint, which order, or any amendment thereof, shall be specific to common intent of the scope of the inquiry to be conducted, and thereupon conduct such inquiry. In any court having more than 1 judge such order and the designation of the judge to conduct the inquiry shall be made in accordance with the rules of such court. Thereupon such judge shall require such persons to attend before him as witnesses and answer such questions as the judge may require concerning any violation of law about which they may be questioned within the scope of the order. The proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony. The witnesses shall not receive any compensation or remuneration other than witness fees as paid witnesses in other criminal proceedings. The witness shall not be employed in any capacity by the judge or by any person connected with such inquiry, within the scope of the inquiry being conducted. Whenever a subpoena is issued by the judge conducting the inquiry, commanding the appearance of a witness before the judge forthwith upon the service of such subpoena, and, following the service thereof, the witness arrives at the time and place stated in the subpoena, the judge issuing the same shall be forthwith notified of the appearance by the officer serving the subpoena, and the judge forthwith shall appear and take the testimony of the witness. Any person called before the grand jury shall at all times be entitled to legal counsel not involving delay and he may discuss fully with his counsel all matters relative to his part in the inquiry without being subject to a citation for contempt. The witness shall have the right to have counsel present in the room where the inquiry is held. All matters revealed to the attorney shall be subject to the requirements of secrecy in section 4, and any revelation thereof by the attorney shall make him subject to punishment as provided in section 4. No testimony shall be taken or given by any witness except in the presence of the judge.

Any judge, prosecuting attorney or special prosecuting attorney, or the attorney general participating in any inquiry under this section which continues more than 30 calendar days shall thereafter be disqualified from appointment or election to any office other than one held at the time of the inquiry. The disqualification shall not extend more than 1 year from date of termination of the inquiry, as determined by final order of the judge entered prior to such date.

*MCLS 767.4 (2014)*

§ 767.4. Apprehension of suspected person; disqualification of investigating judge in later proceedings; removal of public officers, procedure; disclosure of information, exceptions, penalty; report of no finding of criminal guilt; limitation of period of inquiry; inability to continue inquiry; appointment of successor judge.

Sec. 4. If upon such inquiry the judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person to be guilty thereof, he may cause the apprehension of such person by proper process and, upon the return of such process served or executed, the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint. The judge conducting the inquiry under section 3 shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment, or from hearing any charge of contempt under section 5, except alleged contempt for neglect or refusal to appear in response to a summons or subpoena. If upon such inquiry the judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance in office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against the officer. The finding shall be a sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against the officer shall proceed in the method prescribed by law for a hearing and determination of said charges. Except in cases of prosecutions for contempt or perjury against witnesses who may have been summoned before the judge conducting such inquiry, or for the purpose of determining whether the testimony of a witness examined before the judge is consistent with or different from the testimony given by such witness before a court in any subsequent proceeding, or in cases of disciplinary action against attorneys and counselors in this state, any judge conducting the inquiry, any prosecuting attorney and other persons who may at the discretion of the judge be admitted to such inquiry, who shall while conducting such inquiry or while in the services of the judge or after his services with the judge shall have been discontinued, utter or publish any statement pertaining to any information or evidence involved in the inquiry, or who shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, or who shall disclose that any person has been questioned or summoned in connection with the inquiry, who shall disclose or publish or cause to be published any of the proceedings of the inquiry otherwise than by issuing or executing processes prior to the indictment, or shall disclose, publish or cause to be published any comment, opinion or conclusions related to the proceedings of the inquiry, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not more than 1 year or by a fine of not less than \$ 100.00 nor more than \$ 1,000.00, or both fine and imprisonment in the discretion of the court, and the offense when committed by a

public official shall also constitute malfeasance in office. The limitations, restrictions and penalties relating to the uttering, publishing or disclosing of any statement pertaining to any information or evidence, imposed by this section, do not apply to disclosures of information or evidence made by a judge conducting such an investigation to another judge concurrently conducting an investigation as provided in section 3. Upon the termination of the inquiry if the judge shall make no presentment of crime or wrongdoing as to any person whose apprehension or removal from office he has not so caused, he may, in his discretion, with the consent of the person who may be named, file with the clerk of the county in which such inquiry has been conducted, a report of no finding of criminal guilt as to any person or persons involved in such inquiry, either as witness or otherwise, whose involvement in such inquiry has become public.

No inquiry or proceeding under this chapter shall continue longer than 6 months unless extended by specific order of the judge or his successor for an additional period not to exceed 6 months.

In the event any judge conducting such inquiry shall be unable to continue because of physical disability, disqualification, termination of office or death, the presiding circuit judge of Michigan shall appoint a successor.

*MCLS 767.4a (2014)*

§ 767.4a. Secrecy of proceedings, exceptions, penalty.

Sec. 4a. It shall be unlawful for any person, firm or corporation to possess, use, publish, or make known to any other person any testimony, exhibits or secret proceedings obtained or used in connection with any grand jury inquiry conducted prior to the effective date of this act, except in the manner specifically provided herein, and also excepting any information heretofore disclosed before any investigating committee of the Congress of the United States or any agency of the federal government. Any person violating the provisions of this section shall be guilty of a felony.

*MCLS 767.6a (2014)*

§ 767.6a. Sealing and filing of docket, journal, reporters' notes, transcript and other records on termination of inquiry; secrecy; availability of transcript and record to witness in subsequent proceedings; destruction of transcripts, notes and records.

Sec. 6a. On termination of any such inquiry lasting not more than 30 calendar days the docket, journal, reporters' notes, transcript and other record of such judge in such inquiry shall be sealed and filed with the clerk of the court having jurisdiction; and if lasting more than 30 calendar days shall be sealed and filed with the clerk of



the supreme court of the state of Michigan, where it shall be held secretly in a separate container securely locked. Any person who shall violate the secrecy herein ordered as to such docket, journal, transcript and record shall be punished as provided in section 4 hereof. And the entire transcript and record as to any witness, and so far as material, including any grant of immunity, shall be available to such witness in connection with any appeal or other judicial proceeding where it may be relevant upon such witness filing a petition with the circuit court of the county in which he resides setting forth the proceeding for which such documents are sought and describing the portions of such transcript and record as to such witness only, which such witness requested for such appeal or proceeding; the judge of such circuit court shall issue an order upon the filing of such petition directed to the clerk of the supreme court of the state of Michigan or the clerk of the court, as the case may be, ordering such clerk to make available to such witness all such portions of the transcript and record as shall pertain to such witness and as set forth in the petition. The clerk shall immediately reseal the remaining transcript and records after compliance with such order. The petitioner shall execute to the clerk of the supreme court a receipt for such documents and such documents shall be returned to the clerk immediately upon the termination of such appeal or proceeding for which the same shall have been obtained: Provided, however, upon the petition of the prosecuting attorney of the county in which such inquiry was conducted, or any other interested person, any circuit judge, acting as such in said county, upon determining that there is no further need for preserving and retaining the same, shall enter an order providing for the referring to the supreme court, for the entry of such order or orders as a majority of the court may at any time determine, for the destruction of said transcripts, notes and records, or any part thereof: Provided further, That no such order shall be entered by such circuit judge until at least 6 years after the termination of such inquiry.

*MCLS § 767.7 (2015)*

§ 767.7. Grand jury; order for summoning.

Sec. 7. Grand juries shall not hereafter be drawn, summoned or required to attend at the sittings of any court within this state, as provided by law, unless the judge thereof shall so direct by writing under his hand, and filed with the clerk of said court.

*MCLS 767.16 (2014)*

§ 767.16. Grand jury; clerk, stenographer; appointment, duties.

Sec. 16. The grand jury may appoint 1 of their number to be their clerk, to preserve minutes of their proceedings and of evidence given before them; which minutes shall be delivered to the prosecuting officer, when so directed by the grand jury. Whenever it appears to the judge that it is necessary he may appoint a stenographer to take the testimony given before the grand jury.

*MCLS 767.19b (2014)*

§ 767.19b. Delivery of immunity order to witness; use of truthful testimony or other information against witness in criminal case; transcript; duration of order granting immunity.

Sec. 19b. (1) A true copy of the order granting immunity shall be delivered to the witness before he or she answers any questions before the grand jury.

(2) Truthful testimony or other information compelled under the order granting immunity and any information derived directly or indirectly from that truthful testimony or other information shall not be used against the witness in a criminal case, except for impeachment purposes or in a prosecution for perjury or otherwise failing to comply with the order.

(3) All questions asked of the witness and his or her answers shall be transcribed. If a witness who has been granted immunity subsequently alleges that he or she is being prosecuted for an offense in violation of the grant of immunity, a true copy of the transcript, duly certified by an officer authorized to administer oaths, shall be delivered to the witness as soon as practicable.

(4) The order granting immunity shall continue in effect until the judge who summoned the jury or his or her successor, in his or her discretion and upon the prosecuting attorney's application, enters an order terminating the order granting immunity and informs the witness of the order of termination.

*MCLS 767.19f (2014)*

§ 767.19f. Grand jury; publication of testimony prohibited; penalty, exceptions.

Sec. 19f. (1) Except as otherwise provided by law, a person shall not publish or make known to any other person any testimony or exhibits obtained or used, or any proceeding conducted, in connection with any grand jury inquiry. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 1 year or by a fine of not more than \$ 1,000.00, or both.

(2) Subsection (1) does not apply to any of the following:

(a) Communications between prosecuting officers for the purpose of presenting evidence before the grand jury, for the purpose of reviewing evidence presented to the grand jury for prospective prosecution, or for any other purpose involving the execution of a public duty.

(b) Communications between law enforcement officers in cases involving violations of chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z.

(3) Subsection (1) applies to, but its application is not limited to, applications and petitions for and orders of immunity and to any transcript of testimony that may be delivered to a witness pursuant to his or her grant of immunity, except that the witness may be privileged to disclose such application, petition, order, and transcript to his or her attorney.

*MCLS 767.19g (2014)*

§ 767.19g. Availability of testimony; exceptions; procedure; furnishing of copies.

Sec. 19g. (1) The testimony of any witness before the grand jury shall not be made available to any person indicted by such grand jury prior to the time of trial of the indictment except as otherwise provided by this section.

(2) After the filing of an indictment returned by a citizen's grand jury but prior to trial, upon motion of the defendant made not later than 20 days after the arraignment of the defendant on the indictment, the trial judge shall direct the prosecuting attorney to furnish to the defendant the testimony which the defendant gave before the grand jury relative to the offense with which he is charged and may direct the prosecuting attorney to furnish to the defendant the testimony which any witness who will testify at the trial gave before the grand jury relative to the offense with which the defendant is charged except those portions adjudged irrelevant, immaterial or excluded for other good cause shown. If the trial judge directs the prosecuting attorney to furnish to the defendant a copy of a witness's testimony, which has been requested in accordance with this subsection, the prosecuting attorney shall furnish such testimony not later than 10 days prior to the time of trial or shall not call that witness to testify at the defendant's trial.

(3) If the trial judge has not directed the prosecuting attorney to furnish a copy of a witness's testimony to the defendant prior to trial, then at such time during the course of the trial when the direct examination of such a witness has been completed, a copy of the witness's testimony before the grand jury relative to the offense with which the defendant is charged, upon the request of the defendant, shall be furnished by the prosecuting attorney to the defendant.

## MINNESOTA

*Minn Stat 628.65 (2014)*

### 628.65 Make Disclosure, When

Any grand juror may be required by any court to disclose the testimony of any witnesses examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witnesses before the court, or to disclose the testimony given before it by any other person, upon a charge against the person for perjury in giving the testimony, or upon the trial therefor.

*Minn Gen R Prac 707 (2015)*

### Rule 707. Transcription of Pleas, Sentences, and Revocation Hearings in Felony, Gross Misdemeanor, and Extended Jurisdiction Juvenile Proceedings, and Grand Jury Proceedings

The following provisions relate to all pleas, sentences, and revocation hearings in all felony, gross misdemeanor, and extended jurisdiction juvenile proceedings, and all grand jury proceedings. Grand jury proceedings are secret as provided in Minn. R. Crim. P. 18 and this rule must be construed to maintain secrecy in accordance with that rule.

(a) Court reporters and operators of electronic recording equipment shall file the stenographic notes or tape recordings of guilty plea, or sentencing and revocation hearings with the court administrator within 90 days of sentencing, and the stenographic notes or tape recordings of grand jury proceedings shall be filed with the court administrator and maintained in a nonpublic portion of the file at the conclusion of grand jury hearings. The reporter or operator may retrieve the notes or recordings if necessary. Minnesota Statutes 2002, section 486.03, is superseded to the extent that it conflicts with this procedure.

(b) All original grand jury transcripts shall be filed within 60 days of request by the court or prosecutor or receipt of an order from the appropriate court directing transcription and shall be made available to parties other than the court or prosecutor only in accordance with that court order. The court administrator must file and maintain all grand jury transcripts in a nonpublic portion of the file. The court may allow extension of this 60-day deadline upon a showing of good cause.

(c) No charge may be assessed for preparation of a transcript for the district court's own use; any other person ordering a transcript as allowed under the rules shall be at the expense of that person. Transcripts ordered by the defendant or

defense counsel shall be prepaid except when the defendant is represented by the public defender or assigned counsel, or when the defendant makes a sufficient affidavit of an inability to pay and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.

(d) If no district court file exists with respect to a grand jury proceeding, the administrator shall open a grand jury file upon the request of the prosecutor.

(e) The maximum rate charged for the transcription of any proceeding shall be established, until July 1, 2005, by the Conference of Chief Judges, and thereafter by the Judicial Council. Minnesota Statutes 2002, section 486.06, is superseded to the extent that it conflicts with this procedure.

## **MISSISSIPPI**

*Miss Code Ann 13-5-61 (2014)*

### § 13-5-61. Grand jury not to disclose secrets of jury-room

A grand juror, except when called as a witness in court, shall not disclose any proceeding or action had by the grand jury in relation to offenses brought before it, within six (6) months after final adjournment of the grand jury upon which he served, nor shall any grand juror disclose the name or testimony of any witness who has been before the grand jury on pain of fine or imprisonment for contempt of court.

*Miss Code Ann 13-7-25 (2014)*

### § 13-7-25. Recording of proceedings of state grand jury; defendants right to review record; custody of records

A court reporter shall record either stenographically or by use of an electronic recording device, all state grand jury proceedings except when the state grand jury is deliberating or voting. Subject to the limitations of Section 13-7-29 and any rule of court, a defendant has the right to review and to reproduce the stenographically or electronically recorded materials. Transcripts of the recorded testimony or proceedings must be made when requested by the Attorney General or his designee. An unintentional failure of any recording to reproduce all or any portion of the testimony or proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom and all books, papers, records and correspondence produced before the state grand jury shall

remain in the custody and control of the Attorney General or his designee unless otherwise ordered by the court in a particular case.

*Miss Code Ann 13-7-39 (2014)*

§ 13-7-39. Sealing of records, orders and subpoenas of grand jury

Records, orders and subpoenas related to state grand jury proceedings shall be kept under seal to the extent and for the time that is necessary to prevent disclosure of matters occurring before a state grand jury.

## **MISSOURI**

*540.100 RSMo (2014)*

§ 540.100. Clerk of grand jury, appointment

Every grand jury may appoint one of their number to be a clerk thereof, to preserve minutes of their proceedings and of the evidence given before them. The minutes shall be given to the prosecuting or circuit attorney when the grand jury is discharged from further service.

*540.105 RS Mo (2014)*

§ 540.105. Reporter to record testimony--oath

An official reporter of the circuit court, when directed by the judge thereof, shall take down and transcribe for the use of the prosecuting or circuit attorney any or all evidence given before the grand jury. Before taking down any such evidence, however, such reporter shall be sworn by the foreperson of such grand jury not to divulge any of the proceedings or testimony before the grand jury or the names of any witnesses except to the prosecuting or circuit attorney or to any attorney lawfully assisting him in the prosecution of an indictment brought by such grand jury.

*§ 540.106 RS Mo (2014)*

§ 540.106. Grand jury proceeding to be recorded, when--transcript to defendant

Any grand jury proceeding that includes testimony or other information from a witness who is granted immunity from prosecution shall be a recorded proceeding. In the event a person is indicted as a result of such immunized testimony, the prosecutor shall provide a transcription of such testimony to all defendants.

*540.300 RS Mo (2014)*

§ 540.300. Grand jurors required to testify, when

Members of the grand jury may be required by any court to testify whether the testimony of a witness examined before such jury is consistent with or different from the evidence given by such witness before such court. They may also be required to disclose the testimony given before them by any person, upon a complaint against such person for perjury, or upon his trial for such offense.

## **MONTANA**

*46-11-101, MCA (2013)*

46-11-101 Methods of commencing prosecution.

A prosecution may be commenced by:

- (1) a complaint;
- (2) an information following a preliminary examination or waiver of a preliminary examination;
- (3) an information after leave of court has been granted; or
- (4) an indictment upon a finding by a grand jury.

*46-11-308, MCA (2013)*

46-11-308 Who may be present.

The prosecutor, witnesses, interpreters, and a stenographer or operator of a

recording device used for the purpose of taking the evidence may be present while the grand jury is in session. No person other than the jurors may be present while the grand jury is deliberating or voting.

*46-11-316, MCA (2013)*

46-11-316 Recorded proceedings.

(1) The grand jury shall either appoint a stenographer to take in shorthand the testimony of witnesses or the testimony must be taken by a recording device, but the record so made must include the testimony of all witnesses on that particular investigation.

(2) The stenographic reporter or operator of a recording device shall, within 30 days after an indictment has been found, certify and file with the clerk of the district court the shorthand notes or the recordings made and an original transcript of the notes or recordings.

(3) An unintentional failure of any recording to reproduce all or any portion of a proceeding may not affect the validity of the prosecution.

*46-11-317, MCA (2013)*

46-11-317 Secrecy of proceedings -- disclosure.

(1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to any prosecutor or investigator of this state and prosecutors or investigators from any other state or the federal government for use in the performance of the prosecutor's or investigator's duty.

(2) A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, or the prosecutor may not disclose matters occurring before the grand jury except as otherwise permitted by Title 46. An obligation of secrecy may not be imposed on a person except in accordance with this section. A knowing violation of this section may be punishable as contempt of court.

(3) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may be made:

(a) if directed by the district court prior to or in combination with a judicial proceeding;



(b) when permitted by the district court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury; or

(c) when permitted by the district court, to a defendant pursuant to a proper discovery motion.

## **NEBRASKA**

*RRS Neb 27-1101 (2014)*

§ 27-1101. Rule 1101. Applicability of rules; courts; proceedings generally; rules inapplicable; grand jury, miscellaneous proceedings; rules applicable in part

(1) The Nebraska Evidence Rules apply to the following courts in the State of Nebraska: Supreme Court, Court of Appeals, district courts, county courts, and juvenile courts. The word judge when used in the rules shall mean any judge of any court to which the rules apply or other officer who is authorized by statute to hold any hearing to which the rules apply.

(2) The rules apply generally to all civil and criminal proceedings, including contempt proceedings except those in which the judge may act summarily.

(3) The rules with respect to privileges apply at all stages of all actions, cases, and proceedings.

(4) The rules, other than those with respect to privileges, do not apply in the following situations:

(a) Proceedings before grand juries;

(b) Proceedings for extradition or rendition; preliminary examinations or hearings in criminal cases; sentencing or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise;

(c) Contested cases before an administrative agency under the Administrative Procedure Act unless a party to the case requests that the agency be bound by the rules of evidence applicable in the district court; or

(d) Proceedings before the Nebraska Workers' Compensation Court or the Small Claims Court.

*RRS Neb 29-1401 (2014)*

§ 29-1401. Grand jury; when called; death while being apprehended or in custody; procedures.

(1) The district courts are hereby vested with power to call grand juries.

(2) A grand jury may be called and summoned in the manner provided by law on such day of a regular term of the district court in each year in each county of the state as the district court may direct and at such other times and upon such notice as the district court may deem necessary.

(3) District courts shall call a grand jury in each case that a petition meets the requirements of section 32-628, includes a recital as to the reason for requesting the convening of the grand jury and a specific reference to the statute or statutes which are alleged to have been violated, and is signed not more than ninety days prior to the date of filing under section 29-1401.02 by not less than ten percent of the registered voters of the county who cast votes for the office of Governor in such county at the most recent general election held for such office.

(4) District courts shall call a grand jury in each case upon certification by the county coroner or coroner's physician that a person has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel. In each case subject to this subsection:

(a) Law enforcement personnel from the jurisdiction in which the death occurred shall immediately secure the scene, preserve all evidence, and investigate the matter as in any other homicide; and

(b) A grand jury shall be impaneled within thirty days after the certification by the county coroner or coroner's physician, unless the court extends such time period upon the showing of a compelling reason.

*RRS Neb 29-1407.01 (2014)*

§ 29-1407.01. Grand jury proceedings; report; present; duties; transcript; statements; availability

(1) A certified or authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. The reporter's notes and any transcripts which may be prepared shall be

preserved, sealed, and filed with the court. No release or destruction of the notes or transcripts shall occur without prior court approval.

(2) Upon application by the prosecutor, or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of his or her own grand jury testimony, or minutes, reports, or exhibits relating thereto.

(3) Any witness summoned to testify before a grand jury, or an attorney for such witness with the witness's written approval, shall be entitled, prior to testifying, to examine and copy at the witness's expense any statement in the possession of the prosecuting attorney or the grand jury which such witness has made that relates to the subject matter under inquiry by the grand jury. If a witness is proceeding in forma pauperis, he or she shall be furnished, upon request, a copy of such transcript and shall not pay a fee.

*RRS Neb 6-1453 (2015)*

§ 6-1453. Preliminary hearings in felony cases

(A) Transcript of Pleadings. -- In cases where the defendant is ordered bound over to the district court, the original case file shall be transmitted to the clerk of the district court. The register of actions of the case in the county court shall be updated to show the actions in the county court, and the action of transmitting the record shall be recorded on the register of actions.

(B) Transcript of Testimony.

(1) Request for transcription. -- A transcript of testimony may be ordered by a party to the action. The request shall specify which portions of the evidence should be included in the transcript.

(2) Payment. -- A transcript of testimony, when ordered, shall be prepared and paid for as described in § 6-1452(B)(7)(a).

(C) Cover Sheet. -- The county court shall prepare a cover sheet and a certificate of costs, showing whether costs have been paid or are still owed.

## NEVADA

*Nev Rev Stat Ann 172.138 (2014)*

172.138. Use of audiovisual technology to present live testimony before grand jury: When permitted; requirements for taking and preserving testimony; limitations on subsequent use.

1. If a witness resides more than 500 miles from the place of a grand jury proceeding or is unable to attend the grand jury proceeding because of a medical condition, upon the request of the district attorney, the district judge supervising the proceedings of the grand jury may allow a witness to testify before the grand jury through the use of audiovisual technology.
2. The district judge supervising the proceedings of the grand jury may allow a witness to testify before the grand jury through the use of audiovisual technology only if the district judge finds that good cause exists to grant the request based upon the specific facts and circumstances of the grand jury proceeding.
3. If the district judge supervising the proceedings of the grand jury allows a witness to testify at the grand jury proceeding through the use of audiovisual technology:

(a) The testimony of the witness must be:

(1) Taken by a certified videographer who is in the physical presence of the witness. The certified videographer shall sign a written declaration, on a form provided by the district judge, which states that the witness does not possess any notes or other materials to assist in the witness's testimony.

(2) Recorded and preserved through the use of a videotape or other means of audiovisual recording technology.

(3) Transcribed by a certified court reporter appointed pursuant to NRS 172.215 in accordance with the provisions of NRS 172.225.

(b) Before giving testimony, the witness must be sworn and must sign a written declaration, on a form provided by the district judge, which acknowledges that the witness understands that he or she is subject to the jurisdiction of the courts of this state and may be subject to criminal prosecution for the commission of any crime in connection with his or her testimony, including, without limitation, perjury, and that the witness consents to such jurisdiction.

(c) The original recorded testimony of the witness must be delivered to the certified court reporter.

(d) The testimony of the witness may not be used by any party upon the trial of the cause or in any proceeding therein in lieu of the direct testimony of the witness, but the court may allow the testimony of the witness to be used for any other lawful purpose.

4. Audiovisual technology used pursuant to this section must ensure that the witness may be:

(a) Clearly heard and seen; and

(b) Examined.

5. As used in this section, "audiovisual technology" includes, without limitation, closed-circuit video and videoconferencing.

*Nev Rev Stat Ann 172.215 (2014)*

172.215. Certified court reporter: Appointment; compensation; material required for and prohibited from inclusion in notes.

1. Whenever criminal causes are being investigated by the grand jury, it shall appoint a certified court reporter. If the certified court reporter is not an official reporter of the district court, the certified court reporter shall, before entering upon his or her duties, take and subscribe the constitutional oath of office. The certified court reporter is entitled to receive the same compensation for services as an official reporter of the district court.

2. Except as otherwise provided in subsection 3, the certified court reporter shall include in the notes taken of a grand jury proceeding all criminal matters which come before the grand jury including:

(a) The charge by the impaneling judge;

(b) Any subsequent instructions or statements made by the judge;

(c) Each statement made by the district attorney;

(d) Each question asked of and response given by the witnesses who appear before the grand jury; and

(e) Any statements made by the grand jurors during the proceeding.

3. The certified court reporter shall not include in his or her notes:

(a) Any confidential communication between a witness and the witness's legal

counsel, if the legal counsel is allowed to accompany the witness before the grand jury; or

(b) The deliberations and voting of the grand jury.

*RRS Neb 172.225 (2014)*

172.225. Transcripts: Preparation; public record.

1. If an indictment has been found or accusation presented against a defendant, the stenographic reporter shall certify and file with the county clerk an original transcription of his or her notes and a copy thereof and as many additional copies as there are defendants.

2. The reporter shall complete the certification and filing within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time.

3. The county clerk shall:

(a) Deliver a copy of the transcript so filed with the county clerk to the district attorney immediately upon receipt thereof;

(b) Retain one copy for use only by judges in proceedings relating to the indictment or accusation; and

(c) Deliver a copy of the transcript to each defendant who is in custody or has given bail or to the defendant's attorney.

4. Any defendant to whom a copy has not been delivered is entitled upon motion to a continuance of the defendant's arraignment until a date 10 days after the defendant actually receives a copy.

5. If several criminal charges against a defendant are investigated on one investigation and thereafter separate indictments are returned or accusations presented upon the several charges, the delivery to the defendant or his or her attorney of one copy of the transcript of the investigation is a compliance with this section as to all of the indictments or accusations.

6. Upon the filing of such a transcript with the county clerk, the transcript and any related physical evidence exhibited to the grand jury become a matter of public record unless the court:

(a) Orders that the presentment or indictment remain secret until the

defendant is in custody or has been given bail; or

(b) Upon motion, orders the transcript and evidence to remain secret until further order of the court.

*RRS Neb 172.235 (2014)*

172.235. Who may be present when grand jury is in session.

1. Except as otherwise provided in subsection 2, the following persons may be present while the grand jury is in session:

(a) The district attorney;

(b) A witness who is testifying;

(c) An attorney who is accompanying a witness pursuant to NRS 172.239;

(d) Any interpreter who is needed;

(e) The certified court reporter who is taking stenographic notes of the proceeding;

(f) Any person who is engaged by the grand jury pursuant to NRS 172.205; and

(g) Any other person requested by the grand jury to be present.

2. No person other than the jurors may be present while the grand jury is deliberating or voting.

*RRS Neb 172.245 (2014)*

172.245. Secrecy of proceedings of grand jury; permitted disclosures; penalty.

1. The disclosure of:

(a) Evidence presented to the grand jury;

(b) Information obtained by the grand jury;

(c) The results of an investigation made by the grand jury; and

(d) An event occurring or a statement made in the presence of the grand jury other than its deliberations and the vote of a juror,

may be made to the district attorney for use in the performance of the district attorney's duties.

2. Except as otherwise provided in subsection 3, the Attorney General or a member of the Attorney General's staff, a grand juror, district attorney or member of the district attorney's staff, peace officer, clerk, stenographer, interpreter, witness or other person invited or allowed to attend the proceedings of a grand jury shall not disclose:

(a) Evidence presented to the grand jury;

(b) An event occurring or a statement made in the presence of the grand jury;

(c) Information obtained by the grand jury; or

(d) The results of an investigation made by the grand jury.

3. A person may disclose his or her knowledge concerning the proceedings of a grand jury:

(a) When so directed by the court preliminary to or in connection with a judicial proceeding;

(b) When permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the presentment or indictment because of matters occurring before the grand jury;

(c) If the person was a witness before the grand jury and is disclosing his or her knowledge of the proceedings to the person's own attorney; or

(d) As provided in NRS 172.225.

4. No obligation of secrecy may be imposed upon any person except in accordance with this section. The court may direct that a presentment or indictment be kept secret until the defendant is in custody or has been given bail, and the clerk shall seal the presentment or indictment. It is unlawful for any person to disclose the finding of the secret presentment or indictment except when necessary for the issuance and execution of a warrant or summons.

5. A person who violates any of the provisions of this section is guilty of a gross misdemeanor and contempt of court.

6. The attorney general or district attorney shall investigate and prosecute a violation of this section.



7. The grand jury shall inform each person who appears before the grand jury of the provisions of this section and the penalties for its violation.

## **NEW HAMPSHIRE**

*NH Sup Ct RULE 52 (2015)*

### RULE 52. Grand Jury Transcripts

(1) Upon application of the Attorney General or upon the Court's own motion, a Justice of the Superior Court may authorize a stenographic record of the testimony of any witness before a grand jury to be taken by a sworn and qualified reporter. Upon the request of the Attorney General, a transcript of any recorded grand jury proceedings shall be prepared and delivered to him for use only in the enforcement of the State's criminal laws. Without further authorization from the Court, the Attorney General shall not exhibit the transcript or disclose its contents to anyone except a member of his office or a law enforcement officer specifically assigned by him to perform duties to which the contents of the transcript are relevant.

(2) No later than five days before trial, or later for good cause shown, the Attorney General may petition the Court for authority to use at trial any transcript that has been delivered to him under § 1, above. The Court may grant such a petition upon a showing of particularized need for such use. The State shall not use the transcript of testimony of a witness to impeach, refresh recollection or otherwise without first providing a transcript of the entire testimony of that witness to opposing counsel at such reasonable time as the Court may order.

(3) Where any record of grand jury proceedings is authorized, the Justice authorizing the records shall make every effort to recognize and protect the rights and physical well-being of witnesses who testify before the grand jury, by issuing protective orders where necessary to prevent harm to a witness by the disclosure of his testimony.

(4) Upon application from a county attorney or the Attorney General, a Justice of the Superior Court may authorize bailiffs, interpreters, or other court personnel to be present while the grand jury is taking evidence, subject to the obligation to preserve the secrecy of the proceedings.

(5) Within ten days of a plea of not guilty to an indictment in support of which a grand jury has heard testimony that has been transcribed, the State shall inform defense counsel that transcription of testimony was authorized, provided that

nothing in this subsection shall be deemed to require the State to reveal the identity of any witness before a grand jury.

(6) Upon application made no later than 30 days before trial, or later for good cause shown, a defendant, upon a showing of particularized need, may be authorized to examine and copy relevant parts of the stenographic record.

## **NEW JERSEY**

*NJ Court Rules, R 3:6-6 (2015)*

### Rule 3:6-6. Who May Be Present; Record and Transcript

(a) Attendance at Session. No person other than the jurors, the prosecuting attorney, the clerk of the grand jury, the witness under examination, interpreters when needed and, for the purpose of recording the proceedings, a stenographer or operator of a recording device may be present while the grand jury is in session. No person other than the jurors, the clerk, the prosecuting attorney and the stenographer or operator of the recording device may be present while the grand jury is deliberating. The grand jury, however, may request either (1) the prosecuting attorney and the stenographer or operator or (2) the clerk to leave the jury room during its deliberations.

(b) Record; Transcript. A stenographic record or sound recording shall be made of all testimony of witnesses, comments by the prosecuting attorney, and colloquy between the prosecuting attorney and witnesses or members of the grand jury, before the grand jury.

When a digital sound recording of the grand jury proceedings has been made, after an indictment has been returned and if the indictment is not sealed, the court shall furnish or make available a copy of the grand jury proceedings to the parties on compact disk or by other electronic means. After an indictment has been returned, at the request of the defendant, a transcript of the grand jury proceedings shall be made. The request shall designate the portion or portions of the proceedings to be transcribed and the person or persons to whom the transcript is to be furnished. A copy of the request for a transcript will be served contemporaneously by the defendant upon the prosecutor, who may move for a protective order pursuant to R. 3:13-3(e). The prosecutor may request a copy of the transcript at any time.

(c) Retention of Records. If no request has been made or order entered

directing a transcript of the grand jury proceedings to be made within six months after their termination, the stenographic record or sound recording shall be sealed and deposited with the operations division manager's office who shall retain it subject to the directions of the Administrative Director of the Courts.

*NJ Court Rules, R 3:6-7 (2015)*

Rule 3:6-7. Secrecy of proceedings

Except as otherwise provided by R. 3:13-3, the requirement as to secrecy of proceedings of the grand jury shall remain as heretofore, and all persons other than witnesses, permitted by R. 3:6-6 to be present while the grand jury is in session, shall be required to take an oath of secrecy before their admission thereto. Such oath shall also be taken by typists making transcripts of testimony given before the grand jury.

*NJ Court Rules, R 3:13-3 (2015)*

Rule 3:13-3. Discovery and Inspection

(a) Pre-Indictment Discovery. Unless the defendant agrees to more limited discovery, where the prosecutor has made a pre-indictment plea offer, the prosecutor shall, at the time the plea offer is made, provide defense counsel with all available relevant material that would be discoverable at the time of indictment pursuant to paragraph (b)(1) of this rule, except that:

(1) where the prosecutor determines that pre-indictment delivery of all discoverable material would hinder or jeopardize a prosecution or investigation, the prosecutor, consistent with the intent of this rule, shall provide to defense counsel at the time the plea offer is made such relevant material as would not hinder or jeopardize the prosecution or investigation and shall advise defense counsel that complete discovery has not been provided; or

(2) where the prosecutor determines that physical or electronic delivery of the discoverable material would impose an unreasonable administrative burden on the prosecutor's office given the nature, format, manner of collation or volume of discoverable material, the prosecutor may in his or her discretion make discovery available by permitting defense counsel to inspect and copy or photograph such material at the prosecutor's office.

Notwithstanding the exceptions contained in paragraphs (a)(1) and (a)(2) of this rule, the prosecutor shall provide defense counsel with any exculpatory information

or material.

(b) Post Indictment Discovery.

(1) Discovery by the Defendant. Except for good cause shown, the prosecutor's discovery for each defendant named in the indictment shall be delivered to the criminal division manager's office, or shall be available through the prosecutor's office, within seven days of the return or unsealing of the indictment. Good cause shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy. In such circumstances, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph discoverable materials at the prosecutor's office, rather than by copying and delivering such materials. The prosecutor shall also provide defense counsel with a listing of the materials that have been supplied in discovery. If any discoverable materials known to the prosecutor have not been supplied, the prosecutor shall also provide defense counsel with a listing of the materials that are missing and explain why they have not been supplied.

If the defendant is represented by the public defender, defendant's attorney shall obtain a copy of the discovery from the prosecutor's office or the criminal division manager's office prior to, or at, the pre-arraignment conference. However, if the defendant has retained private counsel, upon written request of counsel submitted along with a copy of counsel's entry of appearance and received by the prosecutor's office prior to the date of the pre-arraignment conference, the prosecutor shall, within three business days, send the discovery to defense counsel either by U.S. mail at the defendant's cost or by e-mail without charge, with the manner of transmittal at the prosecutor's discretion. Defense counsel shall simultaneously send a copy of the request for mail or e-mail discovery, along with any request for waiver of the pre-arraignment conference under R. 3:9-1(a), to the criminal division manager's office.

If the defendant is unrepresented at the prearraignment conference, a copy of the discovery shall be provided to defense counsel upon request as provided for in the preceding paragraph, or at the arraignment/status conference, which shall occur no later than 28 days after the return or unsealing of the indictment.

A defendant who does not seek discovery from the State shall so notify the criminal division manager's office and the prosecutor, and the defendant need not provide discovery to the State pursuant to sections (b)(2) or (f), except as required by Rule 3:12-1 or otherwise required by law.

Discovery shall include exculpatory information or material. It shall also include, but is not limited to, the following relevant material:

(A) books, tangible objects, papers or documents obtained from or belonging to

the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(B) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded. The prosecutor also shall provide the defendant with transcripts of all electronically recorded statements or confessions by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(C) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of the prosecutor;

(D) reports or records of prior convictions of the defendant;

(E) books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the prosecutor, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(F) names, addresses, and birthdates of any persons whom the prosecutor knows to have relevant evidence or information including a designation by the prosecutor as to which of those persons may be called as witnesses;

(G) record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the prosecutor and any relevant record of prior conviction of such persons. The prosecutor also shall provide the defendant with transcripts of all electronically recorded co-defendant and witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference, but only if the prosecutor intends to call that co-defendant or witness as a witness at trial.

(H) police reports that are within the possession, custody, or control of the prosecutor;

(I) names and addresses of each person whom the prosecutor expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness,

or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is not furnished 30 days in advance of trial, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(J) all records, including notes, reports and electronic recordings relating to an identification procedure, as well as identifications made or attempted to be made.

(2) Discovery by the State. Defense counsel shall forward a copy of the discovery materials to the prosecuting attorney no later than seven days before the arraignment/status conference. If, however, the arraignment/status conference was held within 28 days of indictment pursuant to R. 3:9-1(c), defense counsel shall provide a copy of the discovery materials to the prosecuting attorney by a date to be determined by the trial judge, except in no event later than 14 days after the date of the arraignment/status conference. Defense counsel shall also provide the prosecuting attorney with a listing of the materials that have been supplied in discovery. If any discoverable materials known to defense counsel have not been supplied, defense counsel also shall provide the prosecuting attorney with a listing of the materials that are missing and explain why they have not been supplied. A defendant shall provide the State with all relevant material, including, but not limited to, the following:

(A) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of defense counsel;

(B) any relevant books, papers, documents or tangible objects, buildings or places or copies thereof, which are within the possession, custody or control of defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(C) the names, addresses, and birthdates of those persons known to defendant who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

(D) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the State may call as a witness at trial. The defendant also shall provide the State with transcripts of all electronically recorded witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(E) names and address of each person whom the defense expects to call to trial

as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is not furnished 30 days in advance of trial the expert may, upon application by the prosecutor, be barred from testifying at trial.

(3) Discovery Provided through Electronic Means. Unless otherwise ordered by the court, the parties may provide discovery pursuant to paragraphs (a) and (b) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(c) Motions for Discovery. No motion for discovery shall be filed unless the moving party certifies that the prosecutor and defense counsel have satisfied the discovery meet and confer requirements of R. 3:9-1(b).

(d) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or the party's attorney or agents, in connection with the investigation, prosecution or defense of the matter nor does it require discovery by the State of records or statements, signed or unsigned, of defendant made to defendant's attorney or agents.

(e) Protective Orders.

(1) Grounds. Upon motion and for good cause shown the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges; or any other

relevant considerations.

(2) Procedure. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone, and if the court thereafter enters a protective order, the entire text of the statement shall be sealed and preserved in the records of the court, to be made available only to the appellate court in the event of an appeal.

(f) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, it may order such party to permit the discovery of materials not previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

## **NEW MEXICO**

*NM Stat Ann 31-6-8 (2014)*

### 31-6-8. Record of testimony.

All proceedings in the grand jury room, with the exception of the deliberations of the grand jury, shall be reported verbatim and the notes or transcriptions thereof certified by the court reporter or stenographer making them, with the notes or transcriptions then deposited with the clerk or other officer of the district court as directed by the district judge. Upon order of the district court in cases where an indictment is returned, the notes may be caused to be transcribed and certified by the stenographer or court reporter who made them, if available, or by another person qualified and competent to transcribe them accurately. Copies of documentary evidence or a summary thereof if directed by the district court exhibited to the grand jury shall be made a part of the record. In cases where an indictment is not returned, the notes or transcriptions shall be destroyed unless ordered by the district judge to be preserved for good cause shown, including but not limited to the prosecution of a witness for perjury.

*5-302A NMRA (2015)*

### 5-302A Grand jury proceedings

A. Notice to target; timing.



(1) Content. The prosecuting attorney assisting the grand jury shall notify the target of a grand jury investigation in writing that he or she is the target of an investigation. The writing shall notify the target of

(a) the nature of the alleged crime being investigated;

(b) the date of the alleged crime;

(c) any applicable statutory citations;

(d) the target's right to testify;

(e) the target's right not to testify;

(f) the target's right to submit exculpatory evidence to the district attorney for presentation to the grand jury; and

(g) the target's right to the assistance of counsel during the grand jury investigation.

Target notices shall be substantially in the form approved by the Supreme Court.

(2) Notice and time. A prosecuting attorney shall use reasonable diligence to notify a person in writing that the person is a target of a grand jury investigation. The target and the target's attorney shall be notified in writing no later than four (4) business days before the scheduled grand jury proceeding if the target is incarcerated. The target and the target's attorney shall be notified in writing no later than ten (10) business days before the scheduled proceeding if the target is not incarcerated.

(3) Notice not required. Notice shall not be required if, prior to the grand jury proceeding, the prosecuting attorney secures a written order of the grand jury judge determining by clear and convincing evidence that notification may result in flight by the target, result in obstruction of justice, or pose a danger to another person, other than the general public.

## B. Evidence.

(1) Lawful, competent, and relevant evidence. All evidence presented shall be lawful, competent, and relevant, but the Rules of Evidence shall not apply.

(2) Exculpatory evidence. The prosecuting attorney shall alert the grand jury to all lawful, competent, and relevant evidence that disproves or reduces a charge or accusation or that makes an indictment unjustified and which is within the knowledge, possession, or control of the prosecuting attorney.

(3) Evidence and defenses submitted by target. If the target submits written notice to the prosecuting attorney of exculpatory evidence as defined in Subparagraph (2) of this paragraph, or a relevant defense, the prosecuting attorney shall alert the grand jury to the existence of the evidence.

(a) Form of submission. The target's submission shall consist of a factual and non-argumentative description of the nature of any tangible evidence and the potential testimony of any witnesses, along with the names and contact information of any witnesses necessary to provide the evidence. The target shall provide its submission to the prosecuting attorney by letter substantially in accordance with Form 9-219 NMRA ("Grand Jury Evidence Alert Letter").

(b) Cover letter. The target's submission to the prosecuting attorney shall be accompanied by a cover letter, which will not go to the grand jury. The cover letter may include proposed questions and should include any contextual information, any arguments as to the propriety or significance of the requested evidence and defenses, and any other matters that may be helpful to the prosecutor or the grand jury judge.

(c) Timing. The target's written notice of evidence shall be provided to the prosecuting attorney no less than forty-eight (48) hours in advance of the scheduled grand jury proceeding.

(4) Review of prosecutor's decision not to alert grand jury to target's evidence or defenses. The prosecuting attorney assisting the grand jury may only be relieved of the duty to alert the grand jury to the target's evidence or defenses by obtaining a court order prior to the grand jury proceeding. The prosecuting attorney shall file a motion under seal with the grand jury judge, with written notice to the target, stating why the target's submitted evidence is not exculpatory as defined in Subparagraph (2) of this paragraph or stating why the grand jury should not be instructed on the target's requested defenses. A copy of the target's grand jury evidence alert letter and cover letter shall be attached to the motion. The target may file under seal a response to the motion, and, if no response is filed, the grand jury judge may ask the target for a written response, to be filed under seal, and may convene a hearing. The burden is on the prosecuting attorney to show that the proposed evidence is not exculpatory as defined in Subparagraph (2) of this paragraph. The grand jury judge will give the prosecuting attorney clear direction on how to proceed before the grand jury, making a record of the decision.

### C. Instructions to grand jury.

(1) Elements and defenses. The prosecuting attorney who is assisting the grand jury shall provide the grand jurors with instructions setting forth the elements of each offense being investigated and the definitions of any defenses raised by the evidence.

(2) Other instructions. The prosecuting attorney shall provide the grand jury with other instructions which are necessary to the fair consideration by the grand jury of the issues presented.

D. Extensions of time. The times set forth in this rule may be changed by the grand jury judge upon written motion demonstrating that an extension is necessary in order to assure compliance with the requirements of this rule.

E. Record. All proceedings in the grand jury room shall be recorded, except that the deliberations of the grand jury shall not be recorded. Copies of any documentary evidence and any target's Grand Jury Evidence Alert Letter which was presented to the grand jury shall be made part of the record.

F. Review by the district court.

(1) Supervisory authority. The district court has supervisory authority over all grand jury proceedings.

(2) Scope of review. Failure to follow the procedures set forth in this rule shall be reviewable in the district court. The weight of the evidence upon which an indictment is returned shall not be subject to review absent a showing of bad faith on the part of the prosecuting attorney assisting the grand jury, but the grand jury proceedings, the indictment, and the lawfulness, competency, and relevancy of the evidence shall be reviewable by the district court.

#### *5-506 NMRA (2015)*

#### 5-506 Grand jury proceedings

A. Indictment. Grand jury indictments shall be public when they are filed with the court. Upon request, the court may order an indictment sealed until arrest.

B. Sound recording. A sound recording shall be made of the testimony of all witnesses and any explanation or instructions of the prosecutor and any comments made by the prosecutor or other persons in the presence of the grand jury. No record shall be made of the deliberations of the grand jury.

C. Copy of recording. At any time after indictment, on request of a party, the district court clerk shall furnish a copy of the tape recording of:

(1) the defendant's testimony before the grand jury; and

(2) the entire proceedings, unless the state objects to some portions of the tape, in which case the court shall determine which portions of the proceedings are to be

furnished to defendant.

D. Disclosure. The district court may prohibit disclosure of that portion of testimony or proceedings which creates substantial risk of harm to some person or which is irrelevant to the defendant.

## **NEW YORK**

*NY CLS CPL 190.25 (2014)*

### § 190.25. Grand jury; proceedings and operation in general

1. Proceedings of a grand jury are not valid unless at least sixteen of its members are present. The finding of an indictment, a direction to file a prosecutor's information, a decision to submit a grand jury report and every other affirmative official action or decision requires the concurrence of at least twelve members thereof.

2. The foreman or any other grand juror may administer an oath to any witness appearing before the grand jury.

3. Except as provided in subdivision three-a of this section, during the deliberations and voting of a grand jury, only the grand jurors may be present in the grand jury room. During its other proceedings, the following persons, in addition to witnesses, may, as the occasion requires, also be present:

(a) The district attorney;

(b) A clerk or other public servant authorized to assist the grand jury in the administrative conduct of its proceedings;

(c) A stenographer authorized to record the proceedings of the grand jury;

(d) An interpreter. Upon request of the grand jury, the prosecutor must provide an interpreter to interpret the testimony of any witness who does not speak the English language well enough to be readily understood. Such interpreter must, if he has not previously taken the constitutional oath of office, first take an oath before the grand jury that he will faithfully interpret the testimony of the witness and that he will keep secret all matters before such grand jury within his knowledge;

(e) A public servant holding a witness in custody. When a person held in official

custody is a witness before a grand jury, a public servant assigned to guard him during his grand jury appearance may accompany him in the grand jury room. Such public servant must, if he has not previously taken the constitutional oath of office, first take an oath before the grand jury that he will keep secret all matters before it within his knowledge.

(f) An attorney representing a witness pursuant to section 190.52 of this chapter while that witness is present.

(g) An operator, as that term is defined in section 190.32 of this chapter, while the videotaped examination of either a special witness or a child witness is being played.

(h) A social worker, rape crisis counselor, psychologist or other professional providing emotional support to a child witness twelve years old or younger, or a social worker or informal caregiver, as provided in subdivision two of section two hundred six of the elder law, for a vulnerable elderly person as provided in subdivision three of section 260.31 of the penal law, who is called to give evidence in a grand jury proceeding concerning a crime defined in article one hundred twenty-one, article one hundred thirty, article two hundred sixty, section 120.10, 125.10, 125.15, 125.20, 125.25, 125.26, 125.27, 255.25, 255.26 or 255.27 of the penal law provided that the district attorney consents. Such support person shall not provide the witness with an answer to any question or otherwise participate in such proceeding and shall first take an oath before the grand jury that he or she will keep secret all matters before such grand jury within his or her knowledge.

3-a. Upon the request of a deaf or hearing-impaired grand juror, the prosecutor shall provide a sign language interpreter for such juror. Such interpreter shall be present during all proceedings of the grand jury which the deaf or hearing-impaired grand juror attends, including deliberation and voting. The interpreter shall, if he or she has not previously taken the constitutional oath of office, first take an oath before the grand jury that he or she will faithfully interpret the testimony of the witnesses and the statements of the prosecutor, judge and grand jurors; keep secret all matters before such grand jury within his or her knowledge; and not seek to influence the deliberations and voting of such grand jury.

4. (a) Grand jury proceedings are secret, and no grand juror, or other person specified in subdivision three of this section or section 215.70 of the penal law, may, except in the lawful discharge of his duties or upon written order of the court, disclose the nature or substance of any grand jury testimony, evidence, or any decision, result or other matter attending a grand jury proceeding. For the purpose of assisting the grand jury in conducting its investigation, evidence obtained by a grand jury may be independently examined by the district attorney, members of his staff, police officers specifically assigned to the investigation, and such other persons as the court may specifically authorize. Such evidence may not be disclosed to other persons without a court order. Nothing contained herein shall prohibit a

witness from disclosing his own testimony.

(b) When a district attorney obtains evidence during a grand jury proceeding which provides reasonable cause to suspect that a child has been abused or maltreated, as those terms are defined by section ten hundred twelve of the family court act, he must apply to the court supervising the grand jury for an order permitting disclosure of such evidence to the state central register of child abuse and maltreatment. A district attorney need not apply to the court for such order if he has previously made or caused a report to be made to the state central register of child abuse and maltreatment pursuant to section four hundred thirteen of the social services law and the evidence obtained during the grand jury proceeding, or substantially similar information, was included in such report. The district attorney's application to the court shall be made ex parte and in camera. The court must grant the application and permit the district attorney to disclose the evidence to the state central register of child abuse and maltreatment unless the court finds that such disclosure would jeopardize the life or safety of any person or interfere with a continuing grand jury proceeding.

5. The grand jury is the exclusive judge of the facts with respect to any matter before it.

6. The legal advisors of the grand jury are the court and the district attorney, and the grand jury may not seek or receive legal advice from any other source. Where necessary or appropriate, the court or the district attorney, or both, must instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions must be recorded in the minutes.

#### *NY CLS CPL 190.30*

#### § 190.30. Grand jury; rules of evidence

1. Except as otherwise provided in this section, the provisions of article sixty, governing rules of evidence and related matters with respect to criminal proceedings in general, are, where appropriate, applicable to grand jury proceedings.

2. A report or a copy of a report made by a public servant or by a person employed by a public servant or agency who is a physicist, chemist, coroner or medical examiner, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison or test performed by him in connection with a case which is the subject of a grand jury proceeding, may, when certified by such person as a report made by him or as a true copy thereof, be received in such grand jury proceeding as evidence of the facts stated therein.

2-a. When the electronic transmission of a certified report, or certified copy thereof, of the kind described in subdivision two or three-a of this section or a sworn statement or copy thereof, of the kind described in subdivision three of this section results in a written document, such written document may be received in such grand jury proceeding provided that: (a) a transmittal memorandum completed by the person sending the report contains a certification that the report has not been altered and a description of the report specifying the number of pages; and (b) the person who receives the electronically transmitted document certifies that such document and transmittal memorandum were so received; and (c) a certified report or a certified copy or sworn statement or sworn copy thereof is filed with the court within twenty days following arraignment upon the indictment; and (d) where such written document is a sworn statement or sworn copy thereof of the kind described in subdivision three of this section, such sworn statement or sworn copy thereof is also provided to the defendant or his counsel within twenty days following arraignment upon the indictment.

3. A written or oral statement, under oath, by a person attesting to one or more of the following matters may be received in such grand jury proceeding as evidence of the facts stated therein:

(a) that person's ownership or lawful custody of, or license to occupy, premises, as defined in section 140.00 of the penal law, and of the defendant's lack of license or privilege to enter or remain thereupon;

(b) that person's ownership of, or possessory right in, property, the nature and monetary amount of any damage thereto and the defendant's lack of right to damage or tamper with the property;

(c) that person's ownership or lawful custody of, or license to possess property, as defined in section 155.00 of the penal law, including an automobile or other vehicle, its value and the defendant's lack of superior or equal right to possession thereof;

(d) that person's ownership of a vehicle and the absence of his consent to the defendant's taking, operating, exercising control over or using it;

(e) that person's qualifications as a dealer or other expert in appraising or evaluating a particular type of property, his expert opinion as to the value of a certain item or items of property of that type, and the basis for his opinion;

(f) that person's identity as an ostensible maker, drafter, drawer, endorser or other signator of a written instrument and its falsity within the meaning of section 170.00 of the penal law 1 ;

(g) that person's ownership of, or possessory right in, a credit card account number or debit card account number, and the defendant's lack of superior or equal right to use or possession thereof.

Provided, however, that no such statement shall be admitted when an adversarial examination of such person has been previously ordered pursuant to subdivision 8 of section 180.60, unless a transcript of such examination is admitted.

3-a. A sex offender registration form, sex offender registration continuation/supplemental form, sex offender registry address verification form, sex offender change of address form or a copy of such form maintained by the division of criminal justice services concerning an individual who is the subject of a grand jury proceeding, may, when certified by a person designated by the commissioner of the division of criminal justice services as the person to certify such records, as a true copy thereof, be received in such grand jury proceeding as evidence of the facts stated therein.

4. An examination of a child witness or a special witness by the district attorney videotaped pursuant to section 190.32 of this chapter may be received in evidence in such grand jury proceeding as the testimony of such witness.

5. Nothing in subdivisions two, three or four of this section shall be construed to limit the power of the grand jury to cause any person to be called as a witness pursuant to subdivision three of section 190.50.

6. Wherever it is provided in article sixty that the court in a criminal proceeding must rule upon the competency of a witness to testify or upon the admissibility of evidence, such ruling may in an equivalent situation in a grand jury proceeding, be made by the district attorney.

7. Wherever it is provided in article sixty that a court presiding at a jury trial must instruct the jury with respect to the significance, legal effect or evaluation of evidence, the district attorney, in an equivalent situation in a grand jury proceeding, may so instruct the grand jury.

8.

(a) A business record may be received in such grand jury proceedings as evidence of the following facts and similar facts stated therein:

(i) a person's use of, subscription to and charges and payments for communication equipment and services including but not limited to equipment or services provided by telephone companies and internet service providers, but not including recorded conversations or images communicated thereby; and

(ii) financial transactions, and a person's ownership or possessory interest in any account, at a bank, insurance company, brokerage, exchange or banking organization as defined in section two of the banking law.



(b) Any business record offered for consideration by a grand jury pursuant to paragraph (a) of this subdivision must be accompanied by a written statement, under oath, that (i) contains a list or description of the records it accompanies, (ii) attests in substance that the person making the statement is a duly authorized custodian of the records or other employee or agent of the business who is familiar with such records, and (iii) attests in substance that such records were made in the regular course of business and that it was the regular course of such business to make such records at the time of the recorded act, transaction, occurrence or event, or within a reasonable time thereafter. Such written statement may also include a statement identifying the name and job description of the person making the statement, specifying the matters set forth in subparagraph (ii) of this paragraph and attesting that the business has made a diligent search and does not possess a particular record or records addressing a matter set forth in paragraph (a) of this subdivision, and such statement may be received at grand jury proceedings as evidence of the fact that the business does not possess such record or records. When records of a business are accompanied by more than one sworn written statement of its employees or agents, such statements may be considered together in determining the admissibility of the records under this subdivision. For the purpose of this subdivision, the term "business records" does not include any records prepared by law enforcement agencies or prepared by any entity in anticipation of litigation.

(c) Any business record offered to a grand jury pursuant to paragraph (a) of this subdivision that includes material beyond that described in such paragraph (a) shall be redacted to exclude such additional material, or received subject to a limiting instruction that the grand jury shall not consider such additional material in support of any criminal charge.

(d) No such records shall be admitted when an adversarial examination of such a records custodian or other employee of such business who was familiar with such records has been previously ordered pursuant to subdivision eight of section 180.60 of this chapter, unless a transcript of such examination is admitted.

(e) Nothing in this subdivision shall affect the admissibility of business records in the grand jury on any basis other than that set forth in this subdivision.

*NY CLS CPL 190.32 (2014)*

§ 190.32. Videotaped examination; definitions, application, order and procedure

(1) Definitions. As used in this section:

(a) "Child witness" means a person twelve years old or less whom the people intend to call as witness in a grand jury proceeding to give evidence concerning any crime

defined in article one hundred thirty or two hundred sixty or section 255.25, 255.26 or 255.27 of the penal law of which the person was a victim.

(b) "Special witness" means a person whom the people intend to call as a witness in a grand jury proceeding and who is either:

(i) Unable to attend and testify in person in the grand jury proceeding because the person is either physically ill or incapacitated; or

(ii) More than twelve years old and who is likely to suffer very severe emotional or mental stress if required to testify in person concerning any crime defined in article one hundred thirty or two hundred sixty or section 255.25, 255.26 or 255.27 of the penal law to which the person was a witness or of which the person was a victim.

(c) "Operator" means a person employed by the district attorney who operates the video camera to record the examination of a child witness or a special witness.

2. In lieu of requiring a witness who is a child witness to appear in person and give evidence in a grand jury proceeding, the district attorney may cause the examination of such witness to be videotaped in accordance with the provisions of subdivision five of this section.

3. Whenever the district attorney has reason to believe that a witness is a special witness, he may make an ex parte application to the court for an order authorizing the videotaping of an examination of such special witness and the subsequent introduction in evidence in a grand jury proceeding of that videotape in lieu of the live testimony of such special witness. The application must be in writing, must state the grounds of the application and must contain sworn allegations of fact, whether of the district attorney or another person or persons, supporting such grounds. Such allegations may be based upon personal knowledge of the deponent or upon information and belief, provided, that in the latter event, the sources of such information and the grounds for such belief are stated.

4. If the court is satisfied that a witness is a special witness, it shall issue an order authorizing the videotaping of such special witness in accordance with the provisions of subdivision five of this section. The court order and the application and all supporting papers shall not be disclosed to any person except upon further court order.

5. The videotaping of an examination either of a child witness or a special witness shall proceed as follows:

(a) An examination of a child witness or a special witness which is to be videotaped pursuant to this section may be conducted anywhere and at any time provided that the operator begins the videotape by recording a statement by the district attorney of the date, time and place of the examination. In addition, the district attorney shall identify himself, the operator and all other persons present.

(b) An accurate clock with a sweep second hand shall be placed next to or behind the witness in such position as to enable the operator to videotape the clock and the witness together during the entire examination. In the alternative, a date and time generator shall be used to superimpose the day, hour, minute and second over the video portion of the recording during the entire examination.

(c) A social worker, rape crisis counselor, psychologist or other professional providing emotional support to a child witness or to a special witness, as defined in subparagraph (ii) of paragraph (b) of subdivision one of this section, or any of those persons enumerated in paragraphs (a), (b), (c), (d), (e), (f) and (g) of subdivision three of section 190.25 may be present during the videotaping except that a doctor, nurse or other medical assistant also may be present if required by the attendant circumstances. Each person present, except the witness, must, if he has not previously taken a constitutional oath of office or an oath that he will keep secret all matters before a grand jury, must take an oath on the record that he will keep secret the videotaped examination.

(d) The district attorney shall state for the record the name of the witness, and the caption and the grand jury number, if any, of the case. If the witness to be examined is a child witness, the date of the witness' birth must be recorded. If the witness to be examined is a special witness, the date of the order authorizing the videotaped examination and the name of the justice who issued the order shall be recorded.

(e) If the witness will give sworn testimony, the administration of the oath must be recorded. If the witness will give unsworn testimony, a statement that the testimony is not under oath must be recorded.

(f) If the examination requires the use of more than one tape, the operator shall record a statement of the district attorney at the end of each tape declaring that such tape has ended and referring to the succeeding tape. At the beginning of such succeeding tape, the operator shall record a statement of the district attorney identifying himself, the witness being examined and the number of tapes which have been used to record the examination of such witness. At the conclusion of the examination the operator shall record a statement of the district attorney certifying that the recording has been completed, the number of tapes on which the recording has been made and that such tapes constitute a complete and accurate record of the examination of the witness.

(g) A videotape of an examination conducted pursuant to this section shall not be edited unless upon further order of the court.

6. When the videotape is introduced in evidence and played in the grand jury, the grand jury stenographer shall record the examination in the same manner as if the witness had testified in person.

7. Custody of the videotape shall be maintained in the same manner as custody of the grand jury minutes.

*NY CLS CPL 210.30 (2014)*

§ 210.30. Motion to dismiss or reduce indictment on ground of insufficiency of grand jury evidence; motion to inspect grand jury minutes

1. A motion to dismiss an indictment or a count thereof pursuant to paragraph (b) of subdivision one of section 210.20 or a motion to reduce a count or counts of an indictment pursuant to subdivision one-a of section 210.20 must be preceded or accompanied by a motion to inspect the grand jury minutes, as prescribed in subdivision two of this section.
2. A motion to inspect grand jury minutes is a motion by a defendant requesting an examination by the court and the defendant of the stenographic minutes of a grand jury proceeding resulting in an indictment for the purpose of determining whether the evidence before the grand jury was legally sufficient to support the charges or a charge contained in such indictment.
3. Unless good cause exists to deny the motion to inspect the grand jury minutes, the court must grant the motion. It must then proceed to examine the minutes and to determine the motion to dismiss or reduce the indictment. If the court, after examining the minutes, finds that release of the minutes, or certain portions thereof, to the parties is necessary to assist the court in making its determination on the motion, it may release the minutes or such portions thereof to the parties. Provided, however, such release shall be limited to that grand jury testimony which is relevant to a determination of whether the evidence before the grand jury was legally sufficient to support a charge or charges contained in such indictment. Prior to such release the district attorney shall be given an opportunity to present argument to the court that the release of the minutes, or any portion thereof, would not be in the public interest. For purposes of this section, the minutes shall include any materials submitted to the grand jury pursuant to subdivision eight of section 190.30 of this chapter.
4. If the court determines that there is not reasonable cause to believe that the evidence before the grand jury may have been legally insufficient, it may in its discretion either (a) deny both the motion to inspect and the motion to dismiss or reduce, or (b) grant the motion to inspect notwithstanding and proceed to examine the minutes and to determine the motion to dismiss or reduce.
5. In any case, the court must place on the record its ruling upon the motion to inspect.

6. The validity of an order denying any motion made pursuant to this section is not reviewable upon an appeal from an ensuing judgment of conviction based upon legally sufficient trial evidence.

7. Notwithstanding any other provision of law, where the indictment is filed against a juvenile offender, the court shall dismiss the indictment or count thereof where the evidence before the grand jury was not legally sufficient to establish the offense charged or any lesser included offense for which the defendant is criminally responsible. Upon such dismissal, unless the court shall authorize the people to resubmit the charge to a subsequent grand jury, and upon a finding that there was sufficient evidence to believe defendant is a juvenile delinquent as defined in subdivision (a) of section seven hundred twelve of the family court act and upon specifying the act or acts it found sufficient evidence to believe defendant committed, the court may direct that such matter be removed to family court in accordance with the provisions of article seven hundred twenty-five of this chapter.

*NY CLS CPL 210.35*

§ 210.35. Motion to dismiss indictment; defective grand jury proceeding

A grand jury proceeding is defective within the meaning of paragraph (c) of subdivision one of section 210.20 when:

1. The grand jury was illegally constituted; or
2. The proceeding is conducted before fewer than sixteen grand jurors; or
3. Fewer than twelve grand jurors concur in the finding of the indictment; or
4. The defendant is not accorded an opportunity to appear and testify before the grand jury in accordance with the provisions of section 190.50; or
5. The proceeding otherwise fails to conform to the requirements of article one hundred ninety to such degree that the integrity thereof is impaired and prejudice to the defendant may result.

**NORTH CAROLINA**

§ 15A-623. Grand jury proceedings and operation in general.

- (a) The finding of an indictment, the return of a presentment, and every other affirmative official action or decision of the grand jury requires the concurrence of at least 12 members of the grand jury.
- (b) The foreman presides over all hearings and has the power to administer oaths or affirmations to all witnesses.
- (c) The foreman must indicate on each bill of indictment or presentment the witness or witnesses sworn and examined before the grand jury. Failure to comply with this provision does not vitiate a bill of indictment or presentment.
- (d) During the deliberations and voting of a grand jury, only the grand jurors may be present in the grand jury room. During its other proceedings, the following persons, in addition to a witness being examined, may, as the occasion requires, also be present:
  - (1) An interpreter, if needed.
  - (2) A law-enforcement officer holding a witness in custody.

Any person other than a witness who is permitted in the grand jury room must first take an oath before the grand jury that he will keep secret all matters before it within his knowledge.

- (e) Grand jury proceedings are secret and, except as expressly provided in this Article, members of the grand jury and all persons present during its sessions shall keep its secrets and refrain from disclosing anything which transpires during any of its sessions.
- (f) The presiding judge may direct that a bill of indictment be kept secret until the defendant is arrested or appears before the court. The clerk must seal the bill of indictment and no person including a witness may disclose the finding of the bill of indictment, or the proceedings leading to the finding, except when necessary for the issuance and execution of an order of arrest.
- (g) Any grand juror or other person authorized to attend sessions of the grand jury and bound to keep its secrets who discloses, other than to his attorney, matters occurring before the grand jury other than in accordance with the provisions of this section is in contempt of court and subject to proceedings in accordance with law.
  - (h) If a grand jury is convened pursuant to G.S. 15A-622(h), notwithstanding subsection (d) of this section, a prosecutor shall be present to examine witnesses, and a court reporter shall be present and record the examination of witnesses. The record shall be transcribed. If the prosecutor determines that it is necessary to compel testimony from the witness, he may grant use immunity to the witness. The grant of use immunity shall be given to the witness in writing by the prosecutor and shall be signed by the prosecutor. The written grant of use immunity shall also be read into the record by the prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury room to consult with his

counsel at reasonable intervals and for a reasonable period of time upon the request of the witness. Notwithstanding subsection (e) of this section, the record of the examination of witnesses shall be made available to the examining prosecutor, and he may disclose contents of the record to other investigative or law-enforcement officers, the witness or his attorney to the extent that the disclosure is appropriate to the proper performance of his official duties. The record of the examination of a witness may be used in a trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings convened pursuant to this act may be made upon written order of a superior court judge if the judge determines disclosure is essential:

- (1) To prosecute a witness who appeared before the grand jury for contempt or perjury; or
- (2) To protect a defendant's constitutional rights or statutory rights to discovery pursuant to G.S. 15A-903.

Upon the convening of the investigative grand jury pursuant to approval by the three-judge panel, the district attorney shall subpoena the witnesses. The subpoena shall be served by the investigative grand jury officer, who shall be appointed by the court. The name of the person subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that information. The presiding superior court judge shall hear any matter concerning the investigative grand jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter for the investigative grand jury shall be present and record and transcribe the in camera proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A. When an investigative grand jury has completed its investigation of the crimes alleged in the petition, the investigative functions of the grand jury shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina Supreme Court.

## **NORTH DAKOTA**

*ND Cent Code 29-10.1-02 (2013)*

### 29-10.1-02. When grand jury may be called.

No grand jury may be drawn, summoned, or convened in any county within this state unless the district judge thereof shall so direct by a written order filed with the clerk of the court in the county wherein the said grand jury is required to attend. Any judge of the district court for any county must direct, in the manner herein provided, that a grand jury be drawn and summoned to attend whenever:

1. The judge deems the attendance of a grand jury necessary for the due enforcement of the laws of the state;
2. The state's attorney of the county wherein the court is to be held, in writing, requests the judge so to do; or
3. A petition in writing requesting the same is presented to the judge, signed by qualified electors of the county equal in number to at least twenty-five percent of the total vote cast in the county for the office of governor of the state at the last general election, but the number of signatures required may not be fewer than two hundred twenty-five nor exceed five thousand.

*ND Cent Code 29-10.1-16 (2013)*

29-10.1-16. Reporter – Transcript

1. Unless otherwise directed by the court, the grand jury shall appoint a competent reporter who must be sworn and who shall record in shorthand or stenotype notes, the testimony given in matters before the grand jury. Whenever an indictment is returned, and if so directed by the court, the reporter shall cause the testimony to be transcribed.
2. Whenever the court directs the testimony to be transcribed, the reporter shall certify and file with the clerk of court the original and sufficient copies of the transcript so as to provide a copy for each person indicted and one for the state's attorney or prosecutor. The reporter shall complete the certification of the transcript within thirty days after the date of the order unless a different period of time is specified by the court.
3. All exhibits presented to the grand jury must be placed in the custody of the state's attorney or prosecutor unless otherwise directed by the court.

*ND Cent Code 29-10.1-26 (2013)*

29-10.1-26. Reception of Evidence

1. Subject to subsection 2, the grand jury shall receive only evidence which is:
  - a. Given by witnesses produced and sworn before the grand jury;
  - b. Furnished by writings, material objects, or other things perceivable through the senses; or
  - c. Contained in a deposition or transcript that is admissible under the North Dakota Rules of Criminal Procedure.
2. The grand jury shall receive only evidence that would be admissible over objection at the trial of a criminal action, but the fact the evidence inadmissible at the trial was received by the grand jury does not render the indictment void if sufficient competent evidence to support the indictment was received by the grand jury.



29-10.1-38. Transcript demand — Waiver of transcript and preliminary examination, when.

Within five days after a first appearance before a magistrate, the person against whom an indictment has been found and presented may make a written demand to the district judge for a copy of the transcript of the testimony given before the grand jury as it relates to that person and the charges against that person. Upon receipt of such written demand, the judge shall issue an appropriate order. If the judge for any reason determines that a copy of a transcript of the testimony cannot be obtained, the person indicted is entitled, but not otherwise, to a preliminary examination, as provided by the statutes or North Dakota Rules of Criminal Procedure for persons otherwise charged with a crime. Under such conditions, the preliminary examination must be had before a judge of the district court serving the county in which the crime was committed or is triable. Failure to make such demand within the time prescribed constitutes a waiver of the right to the transcript or to a preliminary examination.

## OHIO

*Ohio Crim R 6 (2015)*

Rule 6. The grand jury

(A) Summoning grand juries. The judge of the court of common pleas for each county, or the administrative judge of the general division in a multi-judge court of common pleas or a judge designated by him, shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of nine members, including the foreman, plus not more than five alternates.

(B) Objections to grand jury and to grand jurors.

(1) Challenges. The prosecuting attorney, or the attorney for a defendant who has been held to answer in the court of common pleas, may challenge the array of jurors or an individual juror on the ground that the grand jury or individual juror was not selected, drawn, or summoned in accordance with the statutes of this state. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(2) Motion to dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified, if it appears from the record kept pursuant to subdivision (C) that seven

or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(C) Foreman and deputy foreman. The court may appoint any qualified elector or one of the jurors to be foreman and one of the jurors to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall upon the return of the indictment file the record with the clerk of court, but the record shall not be made public except on order of the court. During the absence or disqualification of the foreman, the deputy foreman shall act as foreman.

(D) Who may be present. The prosecuting attorney, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(E) Secrecy of proceedings and disclosure. Deliberations of the grand jury and the vote of any grand juror shall not be disclosed. Disclosure of other matters occurring before the grand jury may be made to the prosecuting attorney for use in the performance of his duties. A grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or typist who transcribes recorded testimony, may disclose matters occurring before the grand jury, other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such matters only when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment has been found against a person before such indictment is filed and the case docketed. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictment except when necessary for the issuance of a warrant or summons. No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(F) Finding and return of indictment. An indictment may be found only upon the concurrence of seven or more jurors. When so found the foreman or deputy foreman shall sign the indictment as foreman or deputy foreman. The indictment shall be returned by the foreman or deputy foreman to a judge of the court of common pleas and filed with the clerk who shall endorse thereon the date of filing and enter each case upon the appearance and trial dockets. If the defendant is in custody or has been released pursuant to Rule 46 and seven jurors do not concur in finding an indictment, the foreman shall so report to the court forthwith.

(G) Discharge and excuse. A grand jury shall serve until discharged by the court. A grand jury may serve for four months, but the court upon a showing of good cause by the prosecuting attorney may order a grand jury to serve more than four months but not more than nine months. The tenure and powers of a grand jury

are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another eligible person in place of the juror excused.

(H) Alternate grand jurors. The court may order that not more than five grand jurors, in addition to the regular grand jury, be called, impanelled and sit as alternate grand jurors. Alternate grand jurors, in the order in which they are called, shall replace grand jurors who, prior to the time the grand jury votes on an indictment, are found to be unable or disqualified to perform their duties. Alternate grand jurors shall be drawn in the same manner, shall have the same qualifications, shall be subjected to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular grand jurors. Alternate grand jurors may sit with the regular grand jury, but shall not be present when the grand jury deliberates and votes.

*ORC Ann 2939.11 (2015)*

§ 2939.11 Official reporters.

The official reporter of the county, or any reporter designated by the court of common pleas, at the request of the prosecuting attorney, or any such reporter designated by the attorney general in investigations conducted by the attorney general, may take notes of or electronically record testimony before the grand jury, and furnish a transcript to the prosecuting attorney or the attorney general, and to no other person. The reporter shall withdraw from the jury room before the jurors begin to express their views or take their vote on the matter before them. Such reporter shall take an oath to be administered by the judge after the grand jury is sworn, imposing an obligation of secrecy to not disclose any testimony taken or heard except to the grand jury, prosecuting attorney, or attorney general, unless called upon in court to make disclosures.

## **OKLAHOMA**

*22 Okl St 328 (2014)*

§ 328. Grand jury must appoint clerk

The grand jury must appoint one of their number as clerk, who must preserve minutes of their proceedings, except of the votes of the individual members, and of the evidence given before them.

*22 Okl St 340 (2014)*

§ 340. Advice of court or district attorney--Reproduction or disclosure of transcript--Who may be present

A. The grand jury may at all reasonable times ask the advice of the court or of the district attorney. In no event shall the grand jury be advised as to the sufficiency or insufficiency of the evidence necessary to return a true bill, in a matter under investigation before them. The district attorney, with or without a regularly appointed assistant district attorney individually or collectively, or if the district attorney and all of his or her assistants are disqualified for any reason, a district attorney or assistant district attorney from another district, appointed by the Attorney General of Oklahoma pursuant to Sections 215.9 and 215.13 of Title 19 of the Oklahoma Statutes, and where proper, the Attorney General, or an assistant attorney general, may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable before them and may interrogate witnesses before them whenever he or she thinks it necessary. A qualified court reporter shall be present and take the testimony of all witnesses.

B. Upon request a transcript of the testimony or any portion thereof shall be made available to an accused or the district attorney, at the expense of the requesting party or officer, and, in the event of an indigent accused, at the expense of the state. Any person who obtains a copy of a transcript shall not reproduce the transcript in whole or in part or otherwise disclose its contents to any person other than his or her attorney without leave of the court. Violation of this provision shall be punishable as contempt. Provided, nothing in this section shall prohibit the attorney for the accused, the district attorney or assistant district attorney from reproducing in whole or in part the transcribed testimony of a witness he or she anticipates calling to testify at trial and providing same to said witness for the sole purpose of preparing for trial.

C. No other person is permitted to be present during sessions of the grand jury except the members of the grand jury, the witness actually under examination, and one attorney representing such witness, except that an interpreter, when necessary, may be present during the interrogation of a witness; provided that, no person, except the members of the grand jury, shall be permitted to be present during the expression of juror opinions or the giving of votes upon any matter before the grand jury; provided further that neither the district attorney, nor an assistant district attorney, may be present or participate in an official capacity, as herein provided, during an investigation by the grand jury of the district attorney's office, or of any person officially associated with said office.

**OREGON**

*ORS 132.080 (2014)*

132.080 Clerk.

The members of the grand jury shall appoint one of their number as clerk. The clerk shall keep minutes of their proceedings (except the votes of the individual jurors) and of the substance of the evidence given before them.

*ORS 132.090 (2014)*

132.090 Presence of persons at sittings or deliberations of jury; interpreters.

(1) Except as provided in subsections (2) and (3) of this section, no person other than the district attorney or a witness actually under examination shall be present during the sittings of the grand jury.

(2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may appoint a reporter who shall attend the sittings of the grand jury to take and report the testimony in any matters pending before the grand jury, and may appoint a parent, guardian or other appropriate person 18 years of age or older to accompany any child 12 years of age or younger, or any person with an intellectual disability, during an appearance before the grand jury. The circuit judge, upon the district attorney's showing to the court that it is necessary for the proper examination of a witness appearing before the grand jury, may appoint a guard, medical or other special attendant or nurse, who shall be present in the grand jury room and shall attend such sittings.

(3) The district attorney may designate an interpreter who is certified under ORS 45.291 to interpret the testimony of witnesses appearing before the grand jury. The district attorney may designate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a certified interpreter is not available and that the person designated by the district attorney is a qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may be present in the grand jury room and attend the sittings of the grand jury.

(4) No person other than members of the grand jury shall be present when the grand jury is deliberating or voting upon a matter before it.

(5) As used in this section, "intellectual disability" has the meaning given that term in ORS 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

(a) Documentary evidence of intellectual functioning; or

(b) The affidavit of a qualified person familiar with the person with an intellectual disability. "Qualified person" includes, but is not limited to, a teacher, therapist or physician.

# PENNSYLVANIA

*Pa R Crim P 228 (2015)*

## Rule 228. Recording of Proceedings Before Investigating Grand Jury

Proceedings before an investigating grand jury, other than the deliberations and voting of the grand jury, shall be stenographically recorded and a transcript made.

*Pa R Crim P 229 (2015)*

## Rule 229. Control of Investigating Grand Jury Transcript/Evidence

Except as otherwise set forth in these rules, the court shall control the original and all copies of the transcript and shall maintain their secrecy. When physical evidence is presented before the investigating grand jury, the court shall establish procedures for supervising custody.

*Pa R Crim P 230 (2015)*

## Rule 230. Disclosure of Testimony Before Investigating Grand Jury

(A) Attorney for the Commonwealth: Upon receipt of the certified transcript of the proceedings before the investigating grand jury, the court shall furnish a copy of the transcript to the attorney for the Commonwealth for use in the performance of official duties.

(B) Defendant in a Criminal Case:

(1) When a defendant in a criminal case has testified before an investigating grand jury concerning the subject matter of the charges against him or her, upon application of such defendant the court shall order that the defendant be furnished with a copy of the transcript of such testimony.

(2) When a witness in a criminal case has previously testified before an investigating grand jury concerning the subject matter of the charges against the defendant, upon application of such defendant the court shall order that the defendant be furnished with a copy of the transcript of such testimony; however, such testimony may be made available only after the direct testimony of that witness at trial.

(3) Upon appropriate motion of a defendant in a criminal case, the court shall order that the transcript of any testimony before an investigating grand jury that is exculpatory to the defendant, or any physical evidence presented to the grand jury that is exculpatory to the defendant, be made available to such defendant.

(C) Other Disclosures: Upon appropriate motion, and after a hearing into relevancy, the court may order that a transcript of testimony before an investigating grand

jury, or physical evidence before the investigating grand jury, may be released to another investigative agency, under such other conditions as the court may impose.

## **RHODE ISLAND**

### *RI Super R Crim P Rule 6 (2015)*

#### Rule 6. The grand jury.

(a) Number of Grand Jurors. A grand jury shall consist of not less than thirteen (13) nor more than twenty-three (23) members and a sufficient number of legally qualified persons shall be summoned to meet this requirement.

(b) Objections to Grand Jury and to Grand Jurors.

(1) Challenges. The attorney for the State or a defendant who has been held to answer may challenge the array of jurors on the ground that the grand jury was not selected or drawn in accordance with the law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be determined by the court.

(2) Motion to Dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the signatures which appear on the indictment pursuant to subdivision (f) of this rule that twelve (12) or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) Foreman and Deputy Foreman. The court shall appoint one (1) of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations. During the absence of the foreman, the deputy foreman shall act as foreman.

(d) Who May Be Present. Attorneys for the State, the witness under examination, interpreters when needed and, for the purpose of taking the evidence or recording instructions, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(e) Recording and Disclosure of Proceedings.

(1) Recording of Proceedings. All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a

proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the State unless disclosed in the proper discharge of his or her official duties or otherwise ordered by the court in a particular case. In the event an indictment is not returned any notes of a stenographer and transcriptions of such notes, and any other recordings of the proceedings, shall be delivered to and impounded by the court.

(2) General Rule of Secrecy. A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the State, or any person to whom disclosure is made under paragraph (e)(3)(A)(ii) shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. A knowing violation of Rule 6 may be punished as a contempt of court.

(3) Exceptions.

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to --

(i) an attorney for the State for use in the performance of such attorney's duty; and

(ii) such government personnel (including personnel of the federal government) as are deemed necessary by an attorney for the State to assist an attorney for the State in the performance of such attorney's duty to enforce criminal law.

(B) Any person to whom matters are disclosed under paragraph (e)(3)(A)(ii) shall not utilize that grand jury material for any purpose other than assisting the attorney for the State in the performance of such attorney's duty to enforce criminal law. An attorney for the State shall promptly provide the court with the names of the persons to whom such disclosure has been made, and shall certify that the attorney has advised such persons of their obligations of secrecy under this rule.

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made --

(i) when so directed by a court preliminarily to or in connection with a judicial proceeding;

(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(iii) when the disclosure is made by an attorney for the State to another grand jury;  
or



(iv) when permitted by a court at the request of an attorney for the State, upon a showing that such matters may disclose a violation of federal criminal law, to an appropriate official of the federal government for the purpose of enforcing such law.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(D) Unless the hearing on a petition for disclosure pursuant to paragraph (e)(3)(C)(i) is ex parte, which it may be when the petitioner is the State, the petitioner shall serve written notice of the petition upon (i) the attorney for the State, (ii) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard.

(4) *Sealed Indictments.* The judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial or arraigned or presented on said indictment before a judge. Thereupon the clerk shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

(5) *Closed Hearing.* Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent improper disclosure of matters occurring before a grand jury.

(6) *Sealed Records.* Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent improper disclosure of matters occurring before a grand jury.

(f) *Finding and Return of Indictment.* An indictment may be found only upon the concurrence of twelve (12) or more jurors and shall be signed by each juror who concurred in the finding. The indictment shall be returned by the grand jury to a judge in open court. If the defendant is in custody or has given bail or recognizance and twelve (12) jurors do not concur in finding an indictment, the foreman shall so report in writing to the court forthwith; whereupon, the Attorney General shall immediately notify the division of the

District Court before which a complaint has been filed or is pending against the defendant of this fact.

(g) *Tenure, Discharge and Excuse.* A grand jury shall serve until the expiration of its term of office as fixed by statute. The court may at any time excuse a grand jury subject to recall during its term of office. On written application of the Attorney General, a grand jury may be extended beyond its term. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or

permanently, and in the latter event the court may impanel another person in place of the juror excused.

## **SOUTH CAROLINA**

*SC Code Ann 14-7-1610 (2014)*

§ 14-7-1610. Legislative findings and intent; applicability.

(A) It is the intent of the General Assembly to enhance the grand jury system and to improve the ability of the State to detect and eliminate criminal activity. The General Assembly recognizes the great importance of having the federal authorities available for certain investigations. The General Assembly finds that crimes involving narcotics, dangerous drugs, or controlled substances, as well as crimes involving obscenity, often transpire or have significance in more than one county of this State. When this occurs, these crimes are most effectively detected and investigated by a grand jury system with the authority to cross county lines.

(B) The General Assembly finds that there is a critical need to enhance the grand jury system to improve the ability of the State to prevent, detect, investigate, and prosecute crimes involving criminal gang activity or a pattern of criminal gang activity pursuant to the provisions of Article 3 of Chapter 8, Title 16. Crimes involving criminal gang activity or a pattern of criminal gang activity transpire at times in a single county, but often transpire or have significance in more than one county of this State. The General Assembly believes criminal gang activity poses an immediate, serious, and unacceptable threat to the citizens of the State and therefore warrants the state grand jury possessing considerably broader investigative authority.

(C) The General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to detect and eliminate public corruption. Crimes involving public corruption transpire at times in a single county, but often transpire or have significance in more than one county of this State. The General Assembly believes that a state grand jury, possessing considerably broader investigative authority than individual county grand juries, should be available to investigate public corruption offenses in South Carolina.

(D) The General Assembly finds it fundamentally necessary to improve the ability of the State to prevent, detect, investigate, and prosecute crimes that involve the depiction of children under the age of eighteen in sexual activity, and obscenity crimes that are directed toward or involve children under the age of eighteen. The serious and unacceptable threat that these crimes pose to children is self-evident and impacts the State as a whole even if the actual criminal act occurs only in one

county of the State. An effective effort to eliminate these heinous crimes requires a coordinated effort, which is accomplished more effectively through the state grand jury system. The effective prevention, detection, investigation, and prosecution of these crimes may require the use and application of state obscenity statutes or common law offenses not specifically directed toward the prevention and punishment of obscenity crimes involving children. Because many of these crimes involve computers, statewide jurisdiction over these crimes is consistent with the jurisdiction of a state grand jury over offenses defined in the Computer Crime Act. The General Assembly concludes that a state grand jury must be available to employ its broad investigative powers in the investigation of child-related obscenity by enabling the state grand jury to investigate all obscenity offenses, regardless of their multi-county impact, or whether they transpire or have significance in more than one county of this State.

E) The General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to detect and investigate crimes involving the election laws including, but not limited to, those named offenses as specified in Title 7, or common law crimes involving the election laws where not superseded, or a crime arising out of or in connection with the election laws, or attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws.

(F) The General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to detect and investigate knowing and wilful crimes which result in actual and substantial harm to the environment. These crimes include knowing and wilful offenses specified in Titles 13, 44, and 48, or any knowing and wilful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a knowing and wilful crime involving the environment if the anticipated actual damages including, but not limited to, the cost of remediation, are two million dollars or more, as certified by an independent environmental engineer who shall be contracted by the Department of Health and Environmental Control.

(1) The General Assembly finds that the South Carolina Department of Health and Environmental Control possesses the expertise and knowledge to determine whether there has occurred an alleged environmental offense as defined in this article.

(2) The General Assembly finds that, because of its expertise and knowledge, the Department of Health and Environmental Control must play a substantial role in the investigation of any such alleged environmental offense.

(3) The General Assembly finds that, while the Department of Health and Environmental Control must not make prosecutorial decisions regarding such alleged environmental offense as defined in this article, the department must be integrally involved in the investigation of any such alleged environmental offense before and after the impaneling of a state grand jury pursuant to Section 14-7-1630.

(4) The General Assembly finds that it is in the public interest to avoid duplicative and overlapping prosecutions to the extent that the Attorney General considers

possible. Therefore, the Attorney General shall consult with and advise the Environmental Protection and Enforcement Coordinating Subcommittee and cooperate with other state and federal prosecutorial authorities having jurisdiction over environmental enforcement in order to carry out the provisions of Sections 14-7-1630(A)(8) and 14-7-1630(C).

(G) The General Assembly finds that related criminal activity often arises out of or in connection with crimes involving narcotics, dangerous drugs or controlled substances, criminal gang activity, obscenity, public corruption, or environmental offenses and that the mechanism for detecting and investigating these related crimes must be improved.

(H) Accordingly, the General Assembly concludes that a state grand jury should be allowed to investigate certain crimes related to narcotics, dangerous drugs or controlled substances, criminal gang activity, and obscenity and also should be allowed to investigate crimes involving public corruption, election laws, and environmental offenses.

(I) This section does not limit the authority of a county grand jury, solicitor, or other appropriate law enforcement personnel to investigate, indict, or prosecute offenses within the jurisdiction of the state grand jury.

*SC Code Ann 14-7-1700 (2014)*

§ 14-7-1700. Record of testimony and other proceedings of grand jury; furnishing of copy to defendant; transcripts, reporter's notes and all other documents to remain in custody and control of attorney general.

A court reporter shall record, either stenographically or by use of an electronic recording device, all proceedings except when a state grand jury is deliberating or voting. Subject to the limitations of Section 14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, a defendant has the right to review and to reproduce the stenographically or electronically recorded materials. Transcripts of the recorded testimony or proceedings must be made when requested by the Attorney General or his designee. Subject to the limitations of Section 14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, a copy of the transcript of the recorded testimony or proceedings requested by the Attorney General or his designee shall be provided to the defendant by the court reporter, upon request, at the transcript rate established by the Office of Court Administration. An unintentional failure of any recording to reproduce all or any portion of the testimony or proceedings does not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom and all books, papers, records, correspondence, or other documents produced before a state grand jury must remain in the custody and control of the Attorney General or his designee unless otherwise ordered by the court in a particular case.

## **SOUTH DAKOTA**

*SD Codified Laws 23A-5-11 (2015)*

### 23A-5-11. (Rule 6 (d)) Appearances before grand jury by prosecuting attorneys and others.

Prosecuting attorneys may at all times appear before the grand jury for the purpose of giving information or advice or interrogating witnesses relative to any matter cognizable by it. Prosecuting attorneys, the witness under examination and his counsel, interpreters if needed, the victim under examination and the victim or witness assistant and, for the purpose of taking the evidence if authorized by the grand jury, a stenographer or operator of a recording device may be present when the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting. The role of counsel appearing with a witness shall be limited to advising the witness. The prosecuting attorney may not be present during the consideration of any charge against himself, except that the grand jury may summon him as a witness.

*SD Codified Laws 23A-5-11.1 (2015)*

### 23A-5-11.1 Recording of witness testimony

The testimony of any witness appearing before a grand jury in any case shall be recorded. Such testimony may be recorded by means of an electronic recording device.

*SD Codified Laws 23A-5-16 (2015)*

### 23A-5-16. (Rule 6 (e)) Disclosure of grand jury proceedings restricted

Disclosure of matters occurring before a grand jury, other than its deliberations and the vote of any juror, may be made to prosecuting attorneys for use in the performance of their duties. Otherwise a juror, attorney, witness, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only if directed by the court preliminary to, or in connection with, a judicial proceeding or if permitted by the court at the request of a defendant upon a showing that grounds may exist for a motion to dismiss an indictment because of matters occurring before a grand jury. A grand juror cannot be questioned for anything that the grand juror may say or any vote that the grand juror may give in the grand jury proceedings

relative to a matter legally pending before it, except for perjury of which the grand juror may have been guilty in making an accusation or giving testimony to his or her fellow jurors. No obligation of secrecy may be imposed upon any person except in accordance with this section. A court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail. In that event the clerk shall seal the indictment, and no person may disclose the finding of the indictment unless necessary for the issuance and execution of a warrant or summons.

## **TENNESSEE**

### *Tenn R Crim P Rule 6 (2015)*

#### **RULE 6. The Grand Jury**

##### **(a) Formation of the Grand Jury.**

- (1) Formation at a Regular Term. On the first day of each term of court at which a grand jury is required to be impaneled, the judge of the court authorized by law to charge the grand jury and to receive its report shall direct the names of all the qualified jurors in attendance for the criminal courts of the county to be written on separate slips of paper and placed in a box or other suitable receptacle and drawn out by the judge in open court. The foreperson and the twelve qualified jurors whose names are first drawn constitute the grand jury for the term and shall attend the court until dismissed by the judge or until the next term.
- (2) Formation at a Special Term. The judge presiding at any special term of the court may impanel a grand jury in the same manner and of the same powers as at a regular term.
- (3) Formation of Concurrent Grand Juries. When the expeditious administration of justice so requires, the court may likewise impanel a second grand jury to operate concurrently with the first.

(4) Oath of Grand Jurors. The following oath shall be administered to all members of the grand jury, including the foreperson:

You as members of the grand jury do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, of all offenses given you in charge, or otherwise brought to your knowledge, committed or triable within this county; that you will keep secret the state's counsel, the other jurors' and your own; that you will present no person from hatred, malice, or ill will, nor leave any unrepresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but that you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God.

(5) Charge to the Grand Jury. After the grand jury has been impaneled and sworn, the judge shall instruct it concerning its powers and duties and the relevant law.

(b) Vacancies on the Grand Jury.

(1) Vacancy as to Grand Juror. When any grand juror becomes unable to serve out the term or is excused on any ground, the court shall fill the vacancy from the original panel. If the court is unable to fill the vacancy from the original panel, it must do so from qualified persons selected in accordance with Rule 6(b)(2).

(2) Vacancy as Foreperson. When the foreperson of the grand jury is unable to serve or is relieved, the court shall appoint a new one according to Rule 6(g) until such time as the foreperson is able to serve or until expiration of his or her term.

(c) Disqualification of Grand Juror for Interest.

(1) Disqualification. No member of the grand jury shall be present during-or take part in-the consideration of a charge or the deliberation of the other grand jurors, if:

(A) the member is charged with an indictable offense;

(B) the member is a prosecutor;

(C) the offense was committed against the member's person or property; or

(D) the member is related to the person charged or to the victim of the alleged crime by blood or marriage within the sixth degree, computed by the civil law.

(2) Filling Vacancy Created by Temporary Disqualification. When a grand juror is excluded because of interest and fewer than twelve grand jurors remain to investigate any matter, the court shall fill the vacancy according to Rule 6(b) only during such investigation.

(d) Powers of the Grand Jury. The grand jury has inquisitorial powers over-and has the authority to return a presentment-of all indictable or presentable offenses found to have been committed or to be triable within the county. At all proper hours, the grand jurors are entitled to free access to all county offices and buildings and to examine, without charge, all records and other papers of any county officers in any way connected with the grand jurors' duties.

(e) Duties of the Grand Jury. It is the duty of the grand

(1) inquire into, consider, and act on all criminal cases submitted to it by the district attorney general;

(2) inquire into any report of a criminal offense brought to its attention by a member of the grand jury;

(3) inquire into the condition and management of prisons and other county buildings and institutions within the county;

(4) inquire into the condition of the county treasury;

(5) inquire into the correctness and sufficiency of county officers' bonds;

(6) inquire into any state or local officers' abuse of office; and

(7) report the results of its actions to the court.

(f) Individual Grand Juror's Duty to Inform. If a member of the grand jury knows or has reason to believe that an indictable public offense has been committed in the county, he or she shall inform the other jurors, who shall investigate it.

(g) Appointment, Qualifications, Term, Compensation, Vote, and Duties of Foreperson.

(1) Appointment of Foreperson. The judge of the court authorized by law to charge and receive the report of the grand jury shall appoint the grand jury foreperson. When concurrent grand juries are impaneled, the court shall appoint a foreperson for each grand jury.

(2) Qualifications of Foreperson. The foreperson shall possess all the qualifications of a juror.

(3) Duration of Appointment. The foreperson shall hold office and exercise powers for a term of two (2) years from appointment. In the discretion of the presiding judge, the foreperson may be removed, relieved, or excused from office for good cause at any time.

(4) Duties of Foreperson. The grand jury foreperson has the following

(A) to assist and cooperate with the district attorney general in ferreting out crime, to the end that the laws may be faithfully enforced;

(B) out of term, to advise the district attorney general about law violations and to furnish names of witnesses, whom the district attorney general may, if he or she deems proper, order summoned to go before the grand jury at the next term;

(C) in term, (in addition to the district attorney general who also has such authority) to order the issuance of subpoenas for grand jury witnesses; and

(D) to vote with the grand jury, which vote counts toward the twelve necessary for the return of an indictment.

(5) Compensation. The county legislative body determines the foreperson's compensation, which must not be less than ten dollars (\$10.00) per day for each day the foreperson's grand jury is actually in session. The foreperson's



compensation may not be diminished during the term of appointment. The foreperson shall receive no other compensation for these services. The foreperson's compensation shall be paid out of the county treasury in the same manner as jurors are paid.

(h) Duties of District Attorney General.

(1) Attendance. When required by the grand jury, the district attorney general may appear before the grand jury for the purpose of giving legal advice, but shall not be present-nor shall any other officer or person other than the grand jurors be present-when the grand jurors vote on an indictment or presentment.

(2) Preparation of Indictments. The district attorney general shall promptly prepare indictments for the grand jury in all cases when a defendant has been bound over to answer a criminal charge or is in the sheriff's custody.

(i) Duties of Clerks.

(1) Furnishing Information to District Attorney General. On the first day of the term, the clerk shall furnish the district attorney general with the names of the prosecutor, defendant, and witnesses in each case.

(2) Issuing Subpoenas for Witnesses. On application of the grand jury, the court clerk shall issue subpoenas for any witnesses the grand jury requires to give evidence before it.

(3) Issuing Process Between Terms. Between terms of court, when the district attorney general believes it necessary to secure the ends of justice and protect the interests of the state, he or she may direct the clerks to issue process to secure the attendance of witnesses before the grand juries on the first day of the succeeding term.

(j) Witnesses Before Grand Jury.

(1) Sending for Witnesses by Grand Jury. The grand jury shall send for witnesses whenever the grand jury or any member suspects that an indictable offense has been committed.

(2) Process for Grand Jury Witnesses. Process for grand jury witnesses shall be directed to the sheriff or other lawful officer, and may also be executed and returned by any officer the court appoints to assist the grand jury.

(3) Failure of Witnesses to Attend. Witnesses subpoenaed by the grand jury who fail to attend may be proceeded against as other defaulting witnesses.

(4) Oath of Grand Jury Witnesses. Witnesses summoned before the grand jury may be sworn by the clerk or foreperson. The foreperson of the grand jury may administer the oath to grand jury witnesses in all cases where the clerks of the criminal and circuit courts may administer such oaths. The

person administering the oath shall indorse the fact on the subpoena, and sign his or her name to such indorsement.

(5) Compelling Witnesses to Testify. A person who refuses to testify before the grand jury may be compelled to do so by the court:

(A) on motion of the district attorney general; and

(B) on a grant of immunity from prosecution for any offense in relation to which the person has been ordered to testify.

(6) Immunity of Certain Witnesses from Prosecution. No witness shall be indicted for any offense in relation to which the district attorney general has compelled the witness to testify before the grand jury.

(7) Limited Detention of Grand Jury Witnesses. The district attorney general shall endeavor to detain witnesses only one (1) day for appearance before the grand jury.

(8) Limited Claim of Attendance of Witnesses Living Within Ten Miles. Witnesses who live within ten (10) miles of the court may claim only one (1) day's attendance before the grand jury, unless detained longer by court order.

(k) Secrecy of Proceedings; Exception.

(1) Grand Jury Proceedings Secret. - Every member of the grand jury shall keep secret the proceedings of that body and the testimony given before it, except as provided in Rule 6(k)(2).

(2) Exception to Rule of Secrecy. The court may require a grand juror to reveal the testimony of a grand jury witness:

(A) to ascertain whether the grand jury testimony is consistent with that given by the witness before the court; or

(B) to disclose the grand jury testimony of any witness charged with perjury.

(l) Grand Jurors as Petit Jurors.

(1) Grand Jurors Serving as Petit Jurors. Except as provided in Rule 6(l)(2), the grand jurors may act as petit jurors in civil or criminal cases when not engaged in grand jury business.

(2) Grand Jurors Barred as Petit Jurors in Certain Cases. No grand juror may sit as a petit juror for any cause involving a defendant in any criminal cause heard by the grand jury of which he or she is a member.

40-12-201. Use of investigative grand jury.

(a) Notwithstanding any other provision of law to the contrary, whenever a district attorney general, within the district attorney general's respective jurisdiction, or the attorney general and reporter has reason to believe that criminal activity involving a violation of or a conspiracy to violate:

(1) Section 39-14-903, relating to money laundering;

(2) Sections 39-17-902(b), 39-17-911 and 39-17-1005, relating to the distribution of certain materials to minors or the use of a minor for obscene purposes;

(3) Section 39-17-417, relating to controlled substances or § 39-17-454, relating to controlled substance analogues;

(4) Sections 39-16-401 — 39-16-405, relating to misconduct involving public officials and employees;

(5) Sections 39-16-101 — 39-16-108, relating to bribery;

(6) Section 39-12-204, relating to racketeer influenced and corrupt organizations;

(7) Sections 39-17-501 — 39-17-507, relating to gambling; or

(8) Sections 39-16-501 — 39-16-507, relating to interference with government operations;

has occurred, the district attorney general or the attorney general and reporter may apply to a committee comprised of two (2) members of the district attorneys general conference and the attorney general and reporter for consent to file a petition to have an investigative grand jury convened to consider the matters specified in the application.

(b) The attorney general and reporter shall appoint a district attorney general from each grand division to serve as potential members of the committee and shall notify the executive director of the district attorneys general conference of the appointments.

(c) The attorney general and reporter shall reappoint the district attorneys general as from time to time may be necessary.

(d)

(1) When an application for an investigative grand jury is made by the attorney general and reporter pursuant to this part, the executive director shall designate one (1) or more of the district attorneys general appointed by the attorney general and reporter to serve on the committee.

(2) If the application is made by a district attorney general, the executive director shall designate either two (2) of the district attorneys general appointed by the attorney general and reporter to serve on the committee or shall designate one (1) of the district attorneys general and the district attorney general making the application.

(e)

(1) The district attorney general or district attorneys general so designated to serve on the committee shall not reside in the same grand division as the county where the grand jury would be seated.

(2) In the case where an application is filed by the attorney general and reporter, the district attorney general for the district where the criminal activity is alleged to have occurred shall be one (1) of the two (2) members of the district attorneys general conference serving on the committee.

(f) The application shall be in writing, shall specify the crimes to be investigated, any persons believed to have knowledge of the crimes to be investigated and the basis of the district attorney general's or attorney general and reporter's knowledge of the matters set forth in the application.

(g) The application shall be filed at the office of the attorney general and reporter in Nashville.

*Tenn Code Ann 40-12-208(2014)*

40-12-208. Recording of proceedings

(a) All proceedings, except when the investigative grand jury is deliberating or voting, shall be recorded stenographically.

(b) Any unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution.

(c) The recording, the reporter's notes or any transcript prepared from the recording or notes shall remain in the custody or control of the district attorney general unless otherwise ordered by the court in a particular case.

*Tenn Code Ann 40-12-210(2014)*

40-12-210. Conditions for disclosure of proceedings and documents.

Disclosure of grand jury documents and proceedings may also be made under this part when:

(1) Directed by a court preliminarily to or in connection with a judicial proceeding;

(2) Disclosure is made by the district attorney general to another grand jury; or

(3) Permitted by a court upon motion of the defendant showing grounds exist for a motion to dismiss the indictment because of matters occurring before the grand jury.

## TEXAS

*Tex Code Crim Proc art. 20.02 (2013)*

### Art. 20.02. Proceedings Secret

- (a) The proceedings of the grand jury shall be secret.
- (b) A grand juror, bailiff, interpreter, stenographer or person operating an electronic recording device, person preparing a typewritten transcription of a stenographic or electronic recording, or person operating a video teleconferencing system for use under Article 20.151 who discloses anything transpiring before the grand jury, regardless of whether the thing transpiring is recorded, in the course of the official duties of the grand jury, is liable to a fine as for contempt of the court, not exceeding \$ 500, imprisonment not exceeding 30 days, or both the fine and imprisonment.
- (c) A disclosure of a record made under Article 20.012, a disclosure of a typewritten transcription of that record, or a disclosure otherwise prohibited by Subsection (b) or Article 20.16 may be made by the attorney representing the state in performing the attorney's duties to a grand juror serving on the grand jury before whom the record was made, another grand jury, a law enforcement agency, or a prosecuting attorney, as permitted by the attorney representing the state and determined by the attorney as necessary to assist the attorney in the performance of the attorney's duties. The attorney representing the state shall warn any person the attorney authorizes to receive information under this subsection of the person's duty to maintain the secrecy of the information. Any person who receives information under this subsection and discloses the information for purposes other than those permitted by this subsection is subject to punishment for contempt in the same manner as persons who violate Subsection (b).
- (d) The defendant may petition a court to order the disclosure of information otherwise made secret by this article or the disclosure of a recording or typewritten transcription under Article 20.012 as a matter preliminary to or in connection with a judicial proceeding. The court may order disclosure of the information, recording, or transcription on a showing by the defendant of a particularized need.
- (e) A petition for disclosure under Subsection (d) must be filed in the district court in which the case is pending. The defendant must also file a copy of the petition with the attorney representing the state, the parties to the judicial proceeding, and any other persons required by the court to receive a copy of the petition. All persons

receiving a petition under this subsection are entitled to appear before the court. The court shall provide interested parties with an opportunity to appear and present arguments for the continuation of or end to the requirement of secrecy.

(f) A person who receives information under Subsection (d) or (e) and discloses that information is subject to punishment for contempt in the same manner as a person who violates Subsection (b).

(g) The attorney representing the state may not disclose anything transpiring before the grand jury except as permitted by Subsections (c), (d), and (e).

(h) A subpoena or summons relating to a grand jury proceeding or investigation must be kept secret to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury. This subsection may not be construed to limit a disclosure permitted by Subsection (c), (d), or (e).

*Tex Code Crim Proc art. 20.012 (2013)*

Art. 20.012. Recording of Certain Testimony

(a) Questions propounded by the grand jury or the attorney representing the state to a person accused or suspected and the testimony of that person to the grand jury shall be recorded either by a stenographer or by use of an electronic device capable of recording sound.

(b) The validity of a grand jury proceeding is not affected by an unintentional failure to record all or part of questions propounded or testimony made under Subsection (a).

(c) The attorney representing the state shall maintain possession of all records other than stenographer's notes made under this article and any typewritten transcription of those records, except as provided by Article 20.02.

## UTAH

*Utah Code Ann 77-10a-2 (2014)*

77-10a-2. Panel of judges — Appointment — Membership — Ordering of grand jury.

(1)

(a) The presiding officer of the Judicial Council shall appoint a panel of five judges from the district courts of the state to hear in secret all persons claiming to have information that would justify the calling of a grand jury. The presiding officer may appoint senior status district court judges to the panel. The presiding officer shall designate one member of the panel as supervising judge to serve at the pleasure of the presiding officer. The panel has the authority of the district court.

(b) To ensure geographical diversity on the panel one judge shall be appointed from the first or second district for a five-year term, one judge shall be appointed from the third district for a four-year term, one judge shall be appointed from the fourth district for a three-year term, one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year term, and one judge shall be appointed from the third district for a one-year term. Following the first term, all terms on the panel are for five years.

(c) The panel shall schedule hearings in each judicial district at least once every three years and may meet at any location within the state. Three members of the panel constitute a quorum for the transaction of panel business. The panel shall act by the concurrence of a majority of members present and may act through the supervising judge or managing judge. The schedule for the hearings shall be set by the panel and published by the Office of the Court Administrator. Persons who desire to appear before the panel shall schedule an appointment with the Office of the Court Administrator at least 10 days in advance. If no appointments are scheduled, the hearing may be canceled. Persons appearing before the panel shall be placed under oath and examined by the judges conducting the hearings. Hearsay evidence may be presented at the hearings only under the same provisions and limitations that apply to preliminary hearings.

(2)

(a) If the panel finds good cause to believe a grand jury is necessary, the panel shall make its findings in writing and may order a grand jury to be summoned.

(b) The panel may refer a matter to the attorney general, county attorney, district attorney, or city attorney for investigation and prosecution. The referral shall contain as much of the information presented to the panel as the panel determines relevant. The attorney general, county attorney, district attorney, or city attorney shall report to the panel the results of any investigation and whether the matter will be prosecuted by a prosecutor's information. The report shall be filed with the panel within 120 days after the referral unless the panel provides for a different amount of time. If the panel is not satisfied with the action of the attorney general, county attorney, district attorney, or city attorney, the panel may order a grand jury to be summoned.

(3) When the attorney general, a county attorney, a district attorney, municipal attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the supervising judge that in his judgment a grand jury is necessary because of criminal activity in the state, the panel shall order a grand jury to be summoned if the panel finds good cause exists.

(4) In determining whether good cause exists under Subsection (3), the panel shall consider, among other factors, whether a grand jury is needed to help maintain public confidence in the impartiality of the criminal justice process.

(5) A written certification under Subsection (3) shall contain a statement that in the prosecutor's judgment a grand jury is necessary, but the certification need not contain any information which if disclosed may create a risk of:

- (a) destruction or tainting of evidence;
- (b) flight or other conduct by the subject of the investigation to avoid prosecution;
- (c) damage to a person's reputation or privacy;
- (d) harm to any person; or
- (e) a serious impediment to the investigation.

(6) A written certification under Subsection (3) shall be accompanied by a statement of facts in support of the need for a grand jury.

(7) The supervising judge shall seal any written statement of facts submitted under Subsection (6).

(8) The supervising judge may at the time the grand jury is summoned:

- (a) order that it be drawn from the state at large as provided in this chapter or from any district within the state; and
- (b) retain authority to supervise the grand jury or delegate the supervision of the grand jury to any judge of any district court within the state.

(9) If after the certification under Subsection (3) the panel does not order the summoning of a grand jury or the grand jury does not return an indictment regarding the subject matter of the certification, the prosecuting attorney may release to the public a copy of the written certification if in the prosecutor's judgment the release does not create a risk as described in Subsection (5).

*Utah Code Ann 77-10a-13 (2014)*

77-10a-13. Location — Who may be present — Witnesses — Witnesses who are subjects — Evidence — Contempt — Notice — Record of proceedings — Disclosure.

(1) The managing judge shall designate the place where the grand jury meets. The grand jury may, upon request and with the permission of the managing judge, meet and conduct business any place within the state. Subject to the approval of the managing judge the grand jury shall determine the times at which it meets.

(2)



(a) Attorneys representing the state, special prosecutors appointed under Section 77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and a court reporter or operator of a recording device to record the proceedings may be present while the grand jury is in session.

(b) No person other than the jurors may be present while the grand jury is deliberating.

(3)

(a) The attorneys representing the state and the special prosecutors may subpoena witnesses to appear before the grand jury and may subpoena evidence in the name of the grand jury without the prior approval or consent of the grand jury or the court. The jury may request that other witnesses or evidence be subpoenaed.

(b) Subpoenas may be issued in the name of the grand jury to any person located within the state and for any evidence located within the state or as otherwise provided by law.

(c) Except as provided in Subsection (3)(d), a subpoena requiring a minor, who is a victim of a crime, to testify before a grand jury may not be served less than 72 hours before the victim is required to testify.

(d) A subpoena may be served upon a minor less than 72 hours before the minor is required to testify if the managing judge makes a factual finding that the minor was intentionally concealed to prevent service or that a shorter period is reasonably necessary to prevent:

(i) a risk to the minor's safety;

(ii) the concealment or removal of the minor from the jurisdiction;

(iii) intimidation or coercion of the minor or a family member of the minor; or

(iv) undue influence on the minor regarding the minor's testimony.

(e) The service requirement in Subsection (3)(c) may be asserted only by or on behalf of the minor and is not a basis for invalidation of the minor's testimony or any indictment issued by the grand jury.

(f) The service requirement of Subsection (3)(d) may be asserted by a parent or legal guardian of the minor on the minor's behalf.

(g) If the managing judge finds it necessary to prevent any of the actions enumerated in Subsections (3)(d)(i) through (iv) or to otherwise protect the minor, the judge may appoint a guardian ad litem to receive service on behalf of the minor, to represent the minor, and to protect the interests of the minor.

(h) If the minor served under Subsection (3)(d), has no parent, legal guardian, or guardian ad litem with whom to confer prior to the grand jury hearing, the managing judge shall appoint legal counsel to represent the minor at the hearing.

(i) For any minor served with a subpoena under this section, attorneys representing the state, or special prosecutors appointed under Section 77-10a-12, shall interview and prepare the minor in the presence of the minor's parent or legal guardian and their attorney, or a guardian ad litem at least 24 hours prior to the time the minor is required to testify. The provisions of this subsection requiring the presence of the minor's parent do not apply if:

(i) the parent is the subject of the grand jury investigation; or

(ii) the parent is engaged in, or conspires with, another to frustrate the protections and purposes of Subsection (3)(d).

(j) The managing judge may enter any order necessary to secure compliance with any subpoena issued in the name of the grand jury.

(4)

(a) Any witness who appears before the grand jury shall be advised, by the attorney for the state or the special prosecutor, of his right to be represented by counsel.

(b) A witness who is also a subject as defined in Section 77-10a-1 shall at the time he appears as a witness be advised:

(i) of his right to be represented by counsel;

(ii) that he is a subject;

(iii) that he may claim his privilege against self-incrimination; and

(iv) of the general scope of the grand jury's investigation.

(c) A witness who is also a target as defined in Section 77-10a-1 shall at the time he appears as a witness, be advised:

(i) of his right to be represented by counsel;

(ii) that he is a target;

(iii) that he may claim his privilege against self-incrimination;

(iv) that the attorney for the state, the special prosecutor, or the grand jury is in possession of substantial evidence linking him to the commission of a crime for which he could be charged; and

(v) of the general nature of that charge and of the evidence that would support the charge.

(d) This Subsection (4) does not require the attorney for the state, the special prosecutor, or the grand jury to disclose to any subject or target the names or identities of witnesses, sources of information, or informants, or disclose information in detail or in a fashion that would jeopardize or compromise any ongoing criminal investigation or endanger any person or the community.

(5)

(a) The grand jury shall receive evidence without regard for the formal rules of evidence, except the grand jury may receive hearsay evidence only under the same provisions and limitations that apply to preliminary hearings.

(b) Any person, including a witness who has previously testified or produced books, records, documents, or other evidence, may present exculpatory evidence to the attorney representing the state or the special prosecutor and request that it be presented to the grand jury, or request to appear personally before the grand jury to testify or present evidence to that body. The attorney for the state or the special prosecutor shall forward the request to the grand jury.

(c) When the attorney for the state or the special prosecutor is personally aware of substantial and competent evidence negating the guilt of a subject or target that might reasonably be expected to lead the grand jury not to indict, he shall present or otherwise disclose the evidence to the grand jury before the grand jury is asked to indict that person.

(6)

(a) The managing judge has the contempt power and authority inherent in the court over which he presides and as provided by statute.

(b) When a witness in any proceeding before or ancillary to any grand jury appearance refuses to comply with an order from the managing judge to testify or provide other information, including any book, paper, document, record, recording, or other material without having a recognized privilege, the attorney for the state or special prosecutor may apply to the managing judge for an order directing the witness to show cause why he should not be held in contempt.

(c) After submission of the application and a hearing at which the witness is entitled to be represented by counsel, the managing judge may hold the witness in contempt and order that he be confined, upon a finding that the refusal was not privileged.

(d) A hearing may not be held under this part unless 72 hours notice is given to the witness who has refused to comply with the order to testify or provide other information, except a witness may be given a shorter notice if the managing judge upon a showing of special need so orders.

(e) Any confinement for refusal to comply with an order to testify or produce other information shall continue until the witness is willing to give the testimony or provide the information. A period of confinement may not exceed the term of the

grand jury, including extensions, before which the refusal to comply with the order occurred. In any event the confinement may not exceed one year.

(f) A person confined under this Subsection (6) for refusal to testify or provide other information concerning any transaction, set of transactions, event, or events may not be again confined under this Subsection (6) or for criminal contempt for a subsequent refusal to testify or provide other information concerning the same transaction, set of transactions, event, or events.

(g) Any person confined under this section may be admitted to bail or released in accordance with local procedures pending the determination of an appeal taken by him from the order of his confinement unless the appeal affirmatively appears to be frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, pursuant to an expedited schedule and in no event more than 30 days from the filing of the appeal.

(7)

(a) All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding does not affect the validity of any prosecution or indictment. The recording or reporter's notes or any transcript prepared from them shall remain in the custody or control of the attorney for the state or the special prosecutor unless otherwise ordered by the managing judge in a particular case.

(b) A grand juror, an interpreter, a court reporter, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the state or special prosecutor, or any person to whom disclosure is made under the provisions of this section may not disclose matters occurring before the grand jury except as otherwise provided in this section. A knowing violation of this provision may be punished as a contempt of court.

(c) Disclosure otherwise prohibited by this section of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to:

(i) an attorney for the state or a special prosecutor for use in the performance of that attorney's duty; and

(ii) government personnel, including those of state, local, and federal entities and agencies, as are considered necessary by the attorney for the state or special prosecutor to assist him in the performance of his duty to enforce the state's criminal laws.

(d) Any person to whom matters are disclosed under this section may not utilize that grand jury material for any purpose other than assisting the attorney for the state or the special prosecutor in performance of that attorney's duty to enforce the state's criminal laws. An attorney for the state or the special prosecutor shall promptly provide the managing judge with the names of the persons to whom the

disclosure has been made and shall certify that the attorney has advised the person of his obligation of secrecy under this section.

(e) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may also be made when:

(i) directed by the managing judge or by any court before which the indictment that involves matters occurring before the grand jury that are subject to disclosure is to be tried, preliminary to or in connection with a judicial proceeding;

(ii) permitted by the managing judge at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(iii) the disclosure is made by an attorney for the state or the special prosecutor to another state or local grand jury or a federal grand jury;

(iv) permitted by the managing judge at the request of an attorney for the state or the special prosecutor, upon a showing that the matters may disclose a violation of federal criminal law, to an appropriate official of the federal government for the purpose of enforcing federal law; or

(v) showing of special need is made and the managing judge is satisfied that disclosure of the information or matters is essential for the preparation of a defense.

(f) When the matters are transcripts of testimony given by witnesses, the state or special prosecutor intends to call in the state's case in chief in any trial upon an indictment returned by the grand jury before which the witnesses testified, the attorney for the state or the special prosecutor shall, no later than 30 days before trial, provide the defendant with access to the transcripts. The attorney for the state or the special prosecutor shall at the same time provide the defendant with access to all exculpatory evidence presented to the grand jury prior to indictment.

(g) When the managing judge orders disclosure of matters occurring before the grand jury, disclosure shall be made in a manner, at a time, and under conditions the managing judge directs.

(h) A petition for disclosure made under Subsection (7)(e)(ii) shall be filed with the managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon the attorney for the state or the special prosecutor, the parties to the judicial proceeding if disclosure is sought in connection with the proceeding, and other persons as the managing judge directs. The managing judge shall afford those persons a reasonable opportunity to appear and be heard.

(8) Records, orders, and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and so long as necessary to prevent disclosure of matters occurring before the grand jury other than as provided in this section.

(9) Subject to any right to an open hearing in contempt proceedings, the managing judge shall order a hearing on matters affecting a grand jury proceeding to be closed

to the extent necessary to prevent disclosure of matters occurring before a grand jury.

## VERMONT

### *VR Cr P Rule 6 (2015)*

#### Rule 6. The grand jury

##### (a) Summoning Grand Juries.

(1) In General. -- On the request of a prosecuting attorney, the Presiding Judge of a superior court, or another judge assigned to that unit of the superior court must order the clerk of the unit to draw a grand jury to be summoned to appear at any special or stated term of that court. The clerk must issue a venire accordingly. The grand jury must have eighteen to twenty-three members who must be residents of the unit. The court must order that enough legally qualified persons be summoned to meet this requirement.

(2) Alternate Jurors. -- When a grand jury is selected, the court may also select alternate jurors. Alternate jurors must have the same qualifications and be selected in the same manner as any other juror. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror is subject to the same challenges, takes the same oath, and has the same authority as the other jurors.

##### (b) Objections to Grand Jury and to Grand Jurors.

(1) Challenges. -- The prosecuting attorney or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

(2) Motion to Dismiss an Indictment. -- A party may move to dismiss the indictment based on an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under Rule 6(b)(1). The court may not dismiss the indictment on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.

(c) Foreperson and Deputy Foreperson. -- The court will appoint one juror as the foreperson and another as the deputy foreperson. In the foreperson's absence, the deputy foreperson will act as the foreperson. The foreperson may administer oaths and affirmations and will sign all indictments. The foreperson--or another juror designated by the foreperson--will record the number of jurors concurring in every indictment and will file the record with the clerk, but the record may not be made public unless the court so orders.

(d) Who May Be Present.

(1) While the Grand Jury Is In Session. -- The following persons may be present while the grand jury is in session: The prosecuting attorney, the witness being questioned, a court security officer if the particular case circumstances should so require, interpreters when needed, and a court reporter or an operator of a recording device.

(2) During Deliberations and Voting. -- No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting.

(e) Recording and Disclosing the Proceedings.

(1) Recording the Proceedings. -- Except while the grand jury is deliberating or voting, all proceedings must be recorded by a court reporter or by a suitable recording device. The persons taking the testimony must make oath that they will keep secret all matters and things coming before the grand jury before entering upon their duties. The validity of a prosecution is not affected by the unintentional failure to make a recording. Unless the court orders otherwise, the prosecuting attorney will retain control of the recording, the reporter's notes, and any transcript prepared from those notes.

(2) Secrecy.

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

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

- (i) a grand juror;
- (ii) an interpreter;
- (iii) a court reporter;
- (iv) an operator of a recording device;
- (v) a person who transcribes recorded testimony;
- (vi) the prosecuting attorney;
- (vii) a court security officer, if case circumstances have required on; or
- (viii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii).

(3) Exceptions.

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

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

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

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

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

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

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

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

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

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

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

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

(i) the prosecuting attorney;

(ii) the parties to the judicial proceeding; and



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

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

(4) Sealed Indictment. -- The judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. The clerk must then seal the indictment, and no person may disclose the indictment's existence except as necessary to issue or execute a warrant or summons.

(5) Closed Hearing. -- Subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent disclosure of a matter occurring before a grand jury.

(6) Sealed Records. -- Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.

(7) Contempt. -- A knowing violation of Rule 6 may be punished as a contempt of court.

(f) Indictment and Return. -- A grand jury may indict only if at least 12 jurors concur. When the grand jury finds an indictment supported by good and sufficient evidence, the foreperson or deputy foreperson must write thereon "a true bill"; and the indictment must be returned by the grand jury to a judge in open court, unless the indictment has been sealed by the court. When the grand jury does not find an indictment so supported, the foreperson or deputy foreperson must write thereon "this bill not found". If the defendant is in custody or has been released under Rule 46 and 12 jurors do not concur in finding an indictment, the foreperson or deputy foreperson must promptly and in writing report the lack of concurrence to the court and the defendant must be discharged. In the event that an indictment is not returned, any stenographic notes and electronic backup, if any, of an official court reporter or tape or digital record of an electronic sound recording and any written record of information necessary for an accurate transcription prepared by the operator and any transcriptions of such notes, tape or digital record must be kept by the prosecuting attorney consistent with the provisions of this rule, unless the court orders otherwise.

(g) Discharge and Excuse. -- No grand jury will serve more than six months unless the time is extended by the Presiding Judge. At any time for good cause the Presiding Judge may excuse a juror either temporarily or permanently, and in the latter event the court may impanel an alternate juror in place of the juror excused.

*VR Cr P Rule 16 (2015)*

Rule 16. Discovery by Defendant

(a) Prosecutor's Obligations. -- Except as provided in subdivision (d) of this rule for matters not subject to disclosure and in Rule 16.2(d) for protective orders, upon a plea of not guilty the prosecuting attorney shall upon request of the defendant made in writing or in open court at his appearance under Rule 5 or at any time thereafter.

(1) Disclose to defendant's attorney as soon as possible the names and addresses of all witnesses then known to him, and permit defendant's attorney to inspect and copy or photograph their relevant written or recorded statements, within the prosecuting attorney's possession or control.

(2) Disclose to defendant's attorney and permit him to inspect and copy or photograph with a reasonable time the following material or information within the prosecuting attorney's possession, custody, or control:

(A) any written or recorded statements and the substance of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one;

(B) the transcript of any grand jury proceedings pertaining to the indictment of the defendant or of any inquest proceedings pertaining to the investigation of the defendant;

(C) any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(D) any books, papers, documents, photographs (including motion pictures and video tapes), or tangible objects, buildings or places or copies or portions thereof, which are material to the preparation of the defense or which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the defendant;

(E) the names and addresses of all witnesses whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any record of prior criminal convictions of any such witness; and

(F) any record of prior criminal convictions of the defendant.

(G) any other material or information not protected from disclosure under subdivision (d) of this rule that is necessary to the preparation of the defense.

The fact that a witness' name is on a list furnished under subparagraph (2)(E) of this subdivision and that he is not called shall not be commented upon at trial.

If no request is made, the prosecuting attorney shall, at or before the status conference, disclose in writing the foregoing items or state in writing that they do not exist.

(b) Same: Collateral or Exculpatory Matter. -- The prosecuting attorney shall, as soon as possible, after a plea of not guilty,

(1) Inform defendant's attorney,

(A) if he has any relevant material or information which has been provided by an informant;

(B) if there are any grand jury or inquest proceedings which have not been transcribed; and

(C) if there has been any electronic surveillance (including wiretapping) of conversations to which the defendant was a party or of his premises.

(2) Disclose to defendant's attorney any material or information within his possession or control which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce his punishment therefor.

(c) Same: Scope. -- The prosecuting attorney's obligations under subdivisions (a) and (b) of this rule extend to material and information in the possession, custody, or control of members of his staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his office.

(d) Matters Not Subject to Disclosure.

(1) Work Product. -- Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the mental impressions, conclusions, opinions, or legal theories of the prosecuting attorney, members of his legal staff, or other agents of the prosecution, including investigators and police officers.

(2) Informants. -- Disclosure of an informant's identity shall not be required except as provided in Rule 509(c) of the Vermont Rules of Evidence.

(e) Videotapes. -- A copy of a videotape made of the alleged offense and subsequent processing shall be available for purchase by the defendant directly from the law enforcement agency responsible for initiating the action upon written request and advance payment of a \$ 45.00 fee, except that no fee shall be charged to a defendant whom the court has determined to be indigent. A municipal or county law enforcement agency shall be entitled to all fees it collects for videotapes sold pursuant to this rule. Fees collected by the state for videotapes sold pursuant to this rule shall be deposited in the DUI enforcement special fund created under section 1220a of Title 23. The original videotape may be erased 90 days after:

(1) the entry of final judgment; or

(2) the date the videotape was made, if no civil or criminal action is filed.

## VIRGINIA

*Va Code Ann 19.2-191 (2013)*

### § 19.2-191. Functions of a grand jury.

The functions of a grand jury are twofold:

- (1) To consider bills of indictment prepared by the attorney for the Commonwealth and to determine whether as to each such bill there is sufficient probable cause to return such indictment “a true bill.”
- (2) To investigate and report on any condition that involves or tends to promote criminal activity, either in the community or by any governmental authority, agency or official thereof. These functions may be exercised by either a special grand jury or a regular grand jury as hereinafter provided.

*Va Code Ann 19.2-192 (2013)*

### § 19.2-192. Secrecy in grand jury proceedings

Except as otherwise provided in this chapter, every attorney for the Commonwealth, special counsel, sworn investigator, and member of a regular, special, or multi-jurisdiction grand jury shall keep secret all proceedings which occurred during sessions of the grand jury; provided, however, in a prosecution for perjury of a witness examined before a regular grand jury, a regular grand juror may be required by the court to testify as to the testimony given by such witness before the regular grand jury.

*Va Code Ann 19.2-206 (2013)*

### § 19.2-206. When impaneled

- A. Special grand juries may be impanelled by a circuit court (i) at any time upon its own motion, (ii) upon recommendation of a minority of the members of a regular grand jury that a special grand jury be impanelled, to perform the functions provided for in subdivision (2) of § 19.2-191, or (iii) upon request of the attorney for the Commonwealth to investigate and report on any condition that involves or tends to promote criminal activity and consider bills of indictment to determine whether there is sufficient probable cause to return each such indictment as a “true bill.”
- B. A special grand jury shall be impanelled by a circuit court upon the recommendation of a majority of the members of a regular grand jury if the court finds probable cause to believe that a crime has been committed which should be investigated by a special grand jury impanelled to perform the functions provided for in subdivision (2) of § 19.2-191.

*Va Code Ann 19.2-212(2013)*

§ 19.2-212. Provision for court reporter; use and disposition of notes, tapes and transcriptions.

A. A court reporter shall be provided for a special grand jury to record, manually or electronically, and transcribe all oral testimony taken before a special grand jury, but such reporter shall not be present during any stage of its deliberations. The notes, tapes and transcriptions of the reporter are for the sole use of the special grand jury, and the contents thereof shall not be divulged by anyone except as hereinafter provided. After the special grand jury has completed its use of the notes, tapes and transcriptions, the foreman shall cause them to be sealed, the container dated, and delivered to the court.

The court shall cause the sealed container to be kept safely. If any witness testifying before the special grand jury is prosecuted subsequently for perjury, the court, on motion of either the attorney for the Commonwealth or the defendant, shall permit them both to have access to the testimony given by the defendant when a witness before the special grand jury, and the testimony shall be admissible in the perjury case.

If no prosecution for perjury is instituted within three years from the date of the report of the special grand jury, the court shall cause the sealed container to be destroyed; however, on motion of the attorney for the Commonwealth, the court may extend the time period for destruction if the grand jury was impanelled at the request of the attorney for the Commonwealth.

B. Upon motion to the presiding judge, the attorney for the Commonwealth shall be permitted to review any evidence that was presented to the special grand jury, and shall be permitted to make notes and to duplicate portions of the evidence as he deems necessary for use in a criminal investigation or proceeding. The attorney for the Commonwealth shall maintain the secrecy of all information obtained from a review or duplication of the evidence presented to the special grand jury. Upon motion to the presiding judge by a person indicted after a special grand jury investigation, similar permission to review, note or duplicate evidence shall be extended if it appears that the permission is consistent with the ends of justice and is necessary to reasonably inform such person of the nature of the evidence to be presented against him, or to adequately prepare his defense.

*Va Code Ann 19.2-215.9 (2013)*

§ 19.2-215.9. Court reporter provided; safekeeping of transcripts, notes, etc.; when disclosure permitted; access to record of testimony and evidence.

A. A court reporter shall be provided for a multi-jurisdiction grand jury to record, manually or electronically, and transcribe all oral testimony taken before a multi-

jurisdiction grand jury, but such a reporter shall not be present during any stage of its deliberations. Such transcription shall include the original or copies of all documents, reports, or other evidence presented to the multi-jurisdiction grand jury. The notes, tapes, and transcriptions of the reporter are for the use of the multi-jurisdiction grand jury, and the contents thereof shall not be used or divulged by anyone except as provided in this article. After the multi-jurisdiction grand jury has completed its use of the notes, tapes, and transcriptions, the foreman shall cause them to be delivered to the clerk of the circuit court in whose jurisdiction the multi-jurisdiction grand jury sits, with copies provided to special counsel. Upon motion of special counsel, the presiding judge may order that such notes, tapes, and transcriptions be destroyed at the direction of special counsel by any means the presiding judge deems sufficient, provided that at least seven years have passed from the date of the multi-jurisdiction grand jury proceeding where such notes, tapes, and transcriptions were made.

B. The clerk shall cause the notes, tapes, and transcriptions or other evidence to be kept safely. Upon motion to the presiding judge, special counsel shall be permitted to review any of the evidence which was presented to the multi-jurisdiction grand jury, and shall be permitted to make notes and to duplicate portions of the evidence as he deems necessary for use in a criminal investigation or proceeding. Special counsel shall maintain the secrecy of all information obtained from a review or duplication of the evidence presented to the multi-jurisdiction grand jury, except that this information may be disclosed pursuant to the provisions of subdivision 2 of § 19.2-215.1. Upon motion to the presiding judge by a person indicted by a multi-jurisdiction grand jury, similar permission to review, note, or duplicate evidence shall be extended if it appears that the permission is consistent with the ends of justice and is necessary to reasonably inform such person of the nature of the evidence to be presented against him, or to adequately prepare his defense.

C. If any witness who testified or produced evidence before the multi-jurisdiction grand jury is prosecuted on the basis of his testimony or the evidence he produced, or if any witness is prosecuted for perjury on the basis of his testimony or the evidence he produced before the multi-jurisdiction grand jury, the presiding judge, on motion of either special counsel or the defendant, shall permit the defendant access to the testimony of or evidence produced by the defendant before the multi-jurisdiction grand jury. The testimony and the evidence produced by the defendant before the multi-jurisdiction grand jury shall then be admissible in the trial of the criminal offense with which the defendant is charged (i) to establish a charge of perjury in the Commonwealth's case-in-chief on the basis of his testimony before the multi-jurisdiction grand jury and (ii) for the purpose of impeaching the defendant in the trial of any other criminal matter, provided the testimony or evidence being used for impeachment was produced by the defendant voluntarily before the multi-jurisdiction grand jury.

## WASHINGTON

*Rev Code Wash 10.27.090 (2014)*

10.27.090. Secrecy enjoined — Exceptions — Use and availability of evidence.

- (1) Every member of the grand jury shall keep secret whatever he, she, or any other grand juror has said, and how he, she, or any other grand juror has voted, except for disclosure of indictments, if any, as provided in RCW 10.27.150.
- (2) No grand juror shall be permitted to state or testify in any court how he, she, or any other grand juror voted on any question before them or what opinion was expressed by himself, herself, 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 or her testimony given before the grand jury or special inquiry judge by any person upon a charge against such person for perjury in giving his or her 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 or her family. The cost of any such transcript made available shall be borne by the applicant.

*Rev Code Wash 10.27.160 (2014)*

10.27.160. Grand jury report.

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.

## **WEST VIRGINIA**

*W Va R Cr P, Rule 6 (2015)*

### Rule 6. The grand jury.

(a) Summoning grand juries. The court may order that a grand jury be summoned at each term of the circuit court or at any specified time for either a regular, special or adjourned term of court. The grand jury shall consist of 16 members, but any fifteen or more members attending shall constitute a quorum. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement as prescribed by Chapter 52, Article 2, Section 3, of the West Virginia Code of 1931, as amended.

(b) Objections to grand jury and grand jurors.

(1) Challenges. The prosecuting attorney or a defendant who has been held to answer in the circuit court may challenge the array of jurors on the ground that the grand jury was not selected, drawn, or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the circuit court.

(2) Motion to dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualifications of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) Foreperson and deputy foreperson. The court shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the grand jury shall keep a record of the name of each witness examined by them, the substance of the evidence given by such witness, and the number of jurors concurring in the finding of every indictment, and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreperson, the deputy foreperson shall act as foreperson.



(d) Who may be present. The following persons may be present while the grand jury is in session: attorneys for the state, the witness under examination, interpreters when needed, and, for the purpose of taking the evidence, a stenographer or operator of a recording device. During deliberations and voting no person other than the jurors and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present.

(e) Reporting and disclosure of proceedings.

(1) Reporting of proceedings. All proceedings, except when the grand jury is deliberating or voting, shall be reported by an official court reporter or a certified court reporter approved by the Supreme Court. An unintentional failure to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution. The reporter's notes or any transcript prepared therefrom shall be filed with the clerk of the circuit court and shall not be made public except on order of the court.

(2) General rule of secrecy. A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the state, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

(3) Exceptions.

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to:

(i) An attorney for the state for use in the performance of such attorney's duty; and

(ii) Such official personnel as are deemed necessary by an attorney for the state to assist an attorney for the state in the performance of such attorney's duty to enforce criminal law.

(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the state in the performance of such attorney's duty to enforce criminal law. An attorney for the state shall promptly provide the circuit court, before which was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made, and shall certify that the attorney has advised such persons of their obligation of secrecy under this rule.

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made:

- (i) when so directed by a court preliminarily to or in connection with a judicial proceeding;
- (ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;
- (iii) when the disclosure is made by an attorney for the state to another grand jury; or
- (iv) when permitted by a court at the request of an attorney for the state, upon a showing that such matters may disclose a violation of federal criminal law or of the law of another state, to an appropriate official of the federal government or of such other state for the purposes of enforcing such law.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(D) A petition for disclosure pursuant to subdivision (e)(3)(C)(i) shall be filed in the county where the grand jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the state, the petitioner shall serve written notice of the petition upon (i) the attorney for the state, (ii) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard.

(E) If the judicial proceeding giving rise to the petition is in a circuit court in another county, the court shall transfer the matter to that court unless it can reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper. The court shall order transmitted to the court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy. The court to which the matter is transferred shall afford the aforementioned persons a reasonable opportunity to appear and be heard.

(4) Sealed indictments. The court to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon, the clerk shall seal the indictment and no person shall disclose the return of the indictment except when

necessary for the issuance and execution of a warrant or summons.

(5) Closed hearing. Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(6) Sealed records. Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.

(f) Finding and return of indictment. An indictment may be found only upon the concurrence of 12 or more jurors. The indictment shall be returned by the grand jury to a circuit judge in open court. If a complaint is pending against the defendant and 12 jurors do not concur in finding an indictment, the foreperson shall so report to the circuit judge in writing forthwith.

(g) Discharge and excuse. A grand jury shall serve until discharged by the court, but no grand jury may serve more than one year unless the court extends the service of the grand jury for a period of six months or less upon a determination that such extension is in the public interest. The tenure and powers of a grand jury are not affected by the beginning and expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

*W Va Code 52-2-15 (2015)*

§ 52-2-15. Secrecy of Grand Jury Proceedings.

(a) A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the state, or any person to whom disclosure is made under paragraph (B), subdivision (1), subsection(c) of this section, shall not disclose matters occurring before the grand jury, except as otherwise provided by subsection (c) of this section, and rules promulgated by the Supreme Court of Appeals.

(b) A person who knowingly violates subsection (a) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or confined in jail not more than thirty days, or both fined and confined.

(c)

(1) Disclosure otherwise prohibited by this section of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to:

(A) An attorney for the state for use in the performance of such attorney's duty;  
and

(B) Such official personnel as are deemed necessary by an attorney for the state to assist an attorney for the state in the performance of such attorney's duty to enforce criminal law.

(2) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may also be made:

(A) when so directed by a court preliminarily to or in connection with a judicial proceeding;

(B) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

(C) when the disclosure is made by an attorney for the state to another grand jury; or

(D) when permitted by a court at the request of an attorney for the state, upon a showing that such matters may disclose a violation of federal criminal law or of the law of another state, to an appropriate official of the federal government or of such other state for the purposes of enforcing such law.

## **WISCONSIN**

*Wis State 968.45 (2014)*

### 968.45. Witness rights; transcripts

(1) Any witness appearing before a grand jury may have counsel present, but the counsel shall not be allowed to examine his or her client, cross-examine other witnesses or argue before the judge. Counsel may consult with his or her client while before a grand jury. If the prosecuting officer, attorney for a witness or a grand juror believes that a conflict of interest exists for an attorney or attorneys to represent more than one witness before a grand jury, the person so believing may make a motion before the presiding judge to disqualify the attorney from representing more than one witness before the grand jury. A hearing shall be held upon notice with the burden upon the moving party to establish the conflict.

(2) No grand jury transcript may be made public until the trial of anyone indicted by the grand jury and then only that portion of the transcript that is relevant and material to the case at hand. This subsection does not limit the defendants rights to discovery under s. 971.23.

*Wis State 968.505 (2014)*

### 968.505. Procedure upon discharge of grand jury

When the grand jury is discharged the clerk shall collect all transcripts of testimony, minutes of proceedings, exhibits and other records of the grand jury, and deliver them as the jury directs either to the attorney general or to the district attorney, or upon approval of the court deliver them to the clerk of the court who shall impound them subject to the further order or orders of the court.

*Wis State 968.53 (2014)*

968.53. When testimony may be disclosed.

Members of the grand jury and any grand jury reporter may be required by any court to testify whether the testimony of a witness examined before the jury is consistent with or different from the evidence given by the witness before the court; and they may also be required to disclose the testimony given before the grand jury by any person upon a complaint against the person for perjury, or upon trial for the offense. Any transcript of testimony taken before the grand jury and certified by a grand jury reporter to have been carefully compared by the reporter with his or her minutes of testimony so taken and to be a true and correct transcript of all or a specified portion of the transcript, may be received in evidence with the same effect as the oral testimony of the reporter to the facts so certified, but the reporter may be cross-examined by any party as to the matter.

## WYOMING

*W R Cr P, Rule 6*

Rule 6. Grand juries.

(a) *County grand jury.*

(1) *Summoning Grand Juries.* -- A *county grand jury* shall be summoned only when ordered by a district judge.

(2) *Manner of Summoning.* -- A *grand jury* shall be drawn, summoned and impaneled in the same manner as trial juries in civil actions.

(3) *Term; Discharge and Excuse.* -- A *grand jury* shall serve until discharged by the court, but no *grand jury* may serve more than 12 months unless the court extends the service of the *grand jury*. Extensions shall be for periods of six months or less, for good cause only, and upon a determination that such extension is in the public interest. At any time for cause shown, the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(4) *Composition; Qualification; Alternates.*

(A) *Number and Qualifications.* -- A *grand jury* shall consist of 12 persons who shall possess the qualifications of trial jurors.

(B) Quorum. -- Not less than nine jurors may act as the *grand jury*.

(C) Alternate Jurors. -- The court may direct that alternate jurors may be designated at the time a *grand jury* is selected. Alternate jurors in the order in which they were designated may thereafter be impaneled as provided in subdivision (a)(3). Alternate jurors shall be drawn in the same manner and shall have the same qualifications as the regular jurors, and if impaneled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors.

(5) Objections to *Grand Jury* and to Grand Jurors.

(A) Challenges. -- The attorney for the state may challenge the array of jurors on the ground that the *grand jury* was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(B) Motion to Dismiss. -- A motion to dismiss an indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the *grand jury* were not legally qualified if it appears from the record kept pursuant to this rule that nine or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(6) Indictment.

(A) Finding to Indict. -- No indictment shall be found unless the finding is concurred in by at least nine members of the *grand jury*.

(B) A True Bill. -- If an indictment is found as provided by this subdivision, the presiding juror of the *grand jury* shall endorse upon the indictment the words "A True Bill" and shall sign the indictment.

(C) Sealed Indictments. -- The district judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. If so directed the clerk shall seal the indictment and no person shall disclose the return of the indictment except as necessary for the issuance and execution of a warrant or summons.

(7) Presiding Juror; Oath of Jurors; Charge.

(A) Presiding Juror. -- The district judge shall appoint one of the jurors to be presiding juror and another to be deputy presiding juror. The presiding juror shall have power to administer oaths and affirmations and shall sign all indictments. The presiding juror or another juror designated by the presiding juror shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the presiding juror, the deputy presiding juror shall act as presiding juror.

(B) Oath. -- Before entering upon their duties, jurors shall swear or affirm that each of them shall:

(i) Diligently inquire into all matters coming before them;

(ii) Find and present indictments truthfully and without malice, fear of reprisal or hope of reward; and

(iii) Keep secret matters occurring before the *grand jury* unless disclosure is directed or permitted by the court.

(C) Charge. -- After the *grand jury* is impaneled and sworn, the district judge shall charge the jurors as to their duties, including their obligation of secrecy, and give them any information the court deems proper concerning any offenses known to the court and likely to come before the *grand jury*.

(8) Powers. -- The *grand jury* may:

(A) Inquire into any crimes committed or triable within the county and present them to the court by indictment; or

(B) Investigate and report to the court concerning the condition of the county jail and the treatment of prisoners.

(9) Appearance before Jury.

(A) Attorneys for State. -- Attorneys for the state may appear before the *grand jury* for the purpose of:

(i) Giving information relative to any matter under inquiry;

(ii) Giving requested advice upon any legal matter; and

(iii) Interrogating witnesses.

(B) Who May Be Present. -- Attorneys for the state, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the *grand jury* is in session, but no person other than the jurors may be present while the *grand jury* is deliberating or voting.

(10) Recording and Disclosure of Proceedings. -- All proceedings, except when the *grand jury* is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the state unless otherwise ordered by the court in a particular case.

(11) Process for Witnesses. -- If requested by the *grand jury* or the attorney for the state, the clerk of the court in which the jury is impaneled shall issue subpoenas for the attendance of witnesses to testify before the *grand jury*.

(12) Administration of Oath or Affirmation to Witnesses. -- Before any witness is examined by the *grand jury*, an oath or affirmation shall be administered to the witness by the presiding juror.

(13) Refusal of Witness to Testify. -- If a witness appearing before a *grand jury* refuses, without just cause shown, to testify or provide other information, the attorney for the state may take the witness before the court for an order directing the witness to show cause why the witness should not be held in contempt. If after the hearing, the court finds that the refusal was without just cause, and if the witness continues to refuse to testify or produce evidence, the court may hold the witness in contempt subject to punishment provided by statute or these rules. The witness has the right to be represented by counsel at such hearing. Nothing in this rule shall be construed to require or permit the court to compel testimony under a grant of immunity unless such a procedure is expressly authorized by statute.

(14) Confidentiality.

(A) Disclosure by Attorney for State. -- Disclosure of matters occurring before the *grand jury*, other than its deliberations and the vote of any juror, may be made to the attorney for the state for use in the performance of the duties of the attorney for the state. The attorney for the state may disclose so much of the *grand jury's* proceeding to law enforcement agencies as the attorney for the state deems essential to the public interest and effective law enforcement.

(B) Disclosure by Others. -- Except as provided in subparagraph (A), 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 preliminarily to, or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that a particularized need exists for a motion to dismiss the indictment because of matters occurring before the *grand jury*. No obligation of secrecy may be imposed upon any person except in accordance with this rule. A knowing violation of this provision may be punishable as contempt of court.

(C) Closed Hearing. -- Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a *grand jury* proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a *grand jury*.

(D) Sealed Records. -- Records, orders and subpoenas relating to *grand jury* proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a *grand jury*.



(15) Presentation and Filing of Indictment. -- Indictments found by the *grand jury* shall be presented by the presiding juror to the district judge in open court in the presence of the *grand jury* and filed with the clerk.

(b) State *grand jury*.

(1) Petition for Impaneling; Determination by District Judge. -- If the governor or the attorney general deems it to be in the public interest to convene a *grand jury* which shall have jurisdiction extending beyond the boundaries of any single county, the governor or attorney general may petition a judge of any district court for an order in accordance with the provisions of Rule 6(b). The district judge may, for good cause shown, order the impaneling of a state *grand jury* which shall have statewide jurisdiction. In making a determination as to the need for impaneling a state *grand jury*, the judge shall require a showing that the matter cannot be effectively handled by a county *grand jury* impaneled pursuant to subdivision (a).

(2) Powers and Duties; Applicable Law; Procedural Rules. -- A state *grand jury* shall have the same powers and duties and shall function in the same manner as a county *grand jury*, except for the provisions of this subdivision, and except that its jurisdiction shall extend throughout the state. The procedural rules applicable to county grand juries shall apply to state grand juries except when inconsistent with the provisions of this subdivision.

(3) Selection and Term of Members. -- The clerk of the district court in each county of the state, upon receipt of an order of the district judge of the court granting a petition to impanel a state *grand jury*, shall prepare a list of 15 prospective state grand jurors drawn from existing jury lists of the county. The list so prepared shall be immediately sent to the clerk of the court granting the petition to impanel the state *grand jury*. The district judge granting the order shall impanel the state *grand jury* from the lists compiled by the clerk of court. The judge preparing the final list from which the grand jurors will be chosen need not include the names of the jurors from every county within the state having due regard for the expense and inconvenience of travel. A state *grand jury* shall be composed of 12 persons, but not more than one-half ( 1/2) of the members of the state *grand jury* shall be residents of any one county. The members of the state *grand jury* shall be selected by the court in the same manner as jurors of county grand juries and shall serve for one year following selection unless discharged sooner by the district judge.

(4) Summoning of Jurors. -- Jurors shall be summoned and selected in the same manner as jurors of county grand juries.

(5) Judicial Supervision. -- Judicial supervision of the state *grand jury* shall be maintained by the district judge who issued the order impaneling the *grand jury*, and all indictments, reports and other formal returns of any kind made by the *grand jury* shall be returned to that judge.

(6) Presentation of Evidence. -- The presentation of the evidence shall be made to the state *grand jury* by the attorney general or the attorney general's designee. In the event the office of the attorney general is under investigation, the presentation

of evidence shall be made to the state *grand jury* by an attorney appointed by the Wyoming Supreme Court.

(7) Return of Indictment; Designation of Venue; Consolidation of Indictments. -- Any indictment by the state *grand jury* shall be returned to the district judge without any designation of venue. Thereupon, the judge shall, by order, designate the county of venue for the purpose of the trial. The judge may order the consolidation of an indictment returned by a county *grand jury* with an indictment returned by a state *grand jury* and fix venue for the trial.

(8) Investigative Powers; Secrecy of Proceedings.

(A) Report to Attorney General. -- In addition to its powers of indictment, a statewide *grand jury* impaneled under this subdivision may, at the request of the attorney general, cause an investigation to be made into the extent of organized criminal activity within the state and return a report to the attorney general.

(B) Disclosure by Attorney General and District Attorney. -- Disclosure of matters occurring before the *grand jury*, other than its deliberations and the vote of any juror, may be made to the attorney general and to any district attorney for use in the performance of their duties. Those officials may disclose so much of the *grand jury's* proceedings to law enforcement agencies as they deem essential to the public interest and effective law enforcement.

(C) Disclosure by Others. -- Except as provided in subparagraph (B), 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 preliminarily to, or in connection with, a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that a particularized need exists for a motion to dismiss the indictment because of matters occurring before the *grand jury*.

(D) Other Obligations of Secrecy. -- No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event, the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons. A knowing violation of this provision may be punishable as contempt of court.

(9) Costs and Expenses. -- The costs and expenses incurred in impaneling a state *grand jury* and in the performance of its functions and duties shall be paid by the state out of funds appropriated to the attorney general for that purpose.