

# **GRAND JURY HEARSAY STATUTES**

**All statutes provided by LexisNexis and current as of March 30, 2015**



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# ALABAMA

*Ala. R. Evid. Rule 1101 (2015)*

## Rule 1101. Rules applicable.

### (a) General applicability.

Except as otherwise provided by constitutional provision, statute, this rule, or other rules of the Supreme Court of Alabama, these rules of evidence apply in all proceedings in the courts of Alabama, including proceedings before referees and masters.

### (b) Rules inapplicable.

These rules, other than those with respect to privileges, do not apply in the following situations:

#### (1) preliminary questions of fact.

The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104.

#### (2) grand jury.

Proceedings before grand juries.

#### (3) miscellaneous proceedings.

Proceedings for extradition or rendition; preliminary 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.

#### (4) contempt proceedings.

Contempt proceedings in which the court may act summarily.

# 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.

## **ARKANSAS**

*ARE 1101 (2015)*

### Rule 1101. Rules applicable.

(a) Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the [courts of this State].

(b) Rules Inapplicable. -- The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary questions of fact. -- The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104 (a).

(2) Grand jury. -- Proceedings before grand juries.

(3) Miscellaneous proceedings. -- Proceedings for extradition or rendition; [preliminary examination] detention hearing 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.

(4) Contempt proceedings in which the court may act summarily.

## **CALIFORNIA**

*Cal Evid Code § 300 (2015)*

### § 300. Applicability of code

Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a court of appeal or superior court, including proceedings in such actions conducted by a referee, court commissioner, or similar officer, but does not apply in grand jury proceedings.

# **COLORADO**

*CRE 1101 (2015)*

## Rule 1101. Applicability of Rules.

(a)

Courts. These rules apply to all courts in the State of Colorado.

(b)

Proceedings generally. These rules apply generally to civil actions, to criminal proceedings, and to contempt proceedings, except those in which the court may act summarily.

(c)

Rule of privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

(Federal Rule Identical.)

(d)

Rules inapplicable. The rules (other than with respect to privileges) do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104.

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations 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.

# CONNECTICUT

*Conn. Code of Evidence 1-1 (2015)*

## Sec. 1-1. Short Title; Application

(a) Short title. These rules shall be known and may be cited as the Code of Evidence. The Code of Evidence is hereinafter referred to as the "Code."

(b) Application of the Code. The Code applies to all proceedings in the superior court in which facts in dispute are found, except as otherwise provided by the Code, the General Statutes or the Practice Book.

(c) Rules of privilege. Privileges shall apply at all stages of all proceedings in the court.

(d) The Code inapplicable. The Code, other than with respect to privileges, does not apply in proceedings such as, but not limited to, the following:

(1) Proceedings before investigatory grand juries, as provided for in General Statutes §§ 54-47b through 54-47f.

(2) Proceedings involving questions of fact preliminary to admissibility of evidence pursuant to Section 1-3 of the Code.

(3) Proceedings involving sentencing.

(4) Proceedings involving probation.

(5) Proceedings involving small claims matters.

(6) Proceedings involving summary contempt.

# DELAWARE

*DRE 1101 (2015)*

## Rule 1101. Applicability of rules and definitions

(a) Rules applicable. -- Except as otherwise provided in paragraphs (b) and (c) of this rule, these Rules apply to all actions and proceedings in all the courts of this

State.

(b) Rules inapplicable. -- The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary questions of fact. -- The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. -- Proceedings before grand juries.

(3) Miscellaneous proceedings. -- Proceedings for extradition or rendition; detention hearing in criminal hearings, 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.

(4) Contempt proceedings. -- Contempt proceedings in which the court may act summarily.

(c) Preliminary hearings. -- In preliminary hearings in criminal cases the court is not bound by these Rules of Evidence except with respect to privileges.

(d) Definition. -- As used throughout these Rules, the term "writing" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

## **GEORGIA**

*OCGA 24-1-2 (2014)*

### § 24-1-2. Applicability of the rules of evidence

(a) The rules of evidence shall apply in all trials by jury in any court in this state.

(b) The rules of evidence shall apply generally to all nonjury trials and other fact-finding proceedings of any court in this state subject to the limitations set forth in subsections (c) and (d) of this Code section.

(c) The rules of evidence, except those with respect to privileges, shall not apply in the following situations:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Code Section 24-1-104;

- (2) Criminal proceedings before grand juries;
  - (3) Proceedings for extradition or rendition;
  - (4) Proceedings for revoking parole;
  - (5) Proceedings for the issuance of warrants for arrest and search warrants except as provided by subsection (b) of Code Section 17-4-40;
  - (6) Proceedings with respect to release on bond;
  - (7) Dispositional hearings and custody hearings in juvenile court; or
  - (8) Contempt proceedings in which the court, pursuant to subsection (a) of Code Section 15-1-4, may act summarily.
- (d) (1) In criminal commitment or preliminary hearings in any court, the rules of evidence shall apply except that hearsay shall be admissible.
- (2) In in rem forfeiture proceedings, the rules of evidence shall apply except that hearsay shall be admissible in determining probable cause or reasonable cause.
- (3) In presentence hearings, the rules of evidence shall apply except that hearsay and character evidence shall be admissible.
- (4) In administrative hearings, the rules of evidence as applied in the trial of nonjury civil actions shall be followed, subject to special statutory rules or agency rules as authorized by law.
- (e) Except as modified by statute, the common law as expounded by Georgia courts shall continue to be applied to the admission and exclusion of evidence and to procedures at trial.

## **HAWAII**

*HRS 1101 (2015)*

### Rule 1101. Applicability of rules.

(a) Courts. These rules apply to all courts of the State of Hawaii except as otherwise provided by statute.



(b) Proceedings. These rules apply generally to civil and criminal proceedings.

(c) Rule of privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

(d) Rules inapplicable. The rules (other than with respect to privileges) do not apply in the following:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104.

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary 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.

(4) Small claims. Proceedings before the small claims division of the district courts.

## **ILLINOIS**

*Ill R Evid 1101 (2014)*

### Rule 1101. Applicability of Rules

(a) Except as otherwise provided in paragraphs (b) and (c), these rules govern proceedings in the courts of Illinois.

(b) Rules Inapplicable. These rules (other than with respect to privileges) do not apply in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104.

(2) Grand Jury. Proceedings before grand juries.

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, conditional discharge or supervision; postconviction hearings; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise, and contempt proceedings in which the court may act summarily.

(c) Small Claims Actions. These rules apply to small claims actions, subject to the application of Supreme Court Rule 286(b).

## INDIANA

### Rule 101. Scope.

(a) Scope. -- These rules apply to proceedings in the courts of this State to the extent and with the exceptions stated in this rule.

(b) General applicability. -- These rules apply in all proceedings in the courts of the State of Indiana except as otherwise required by the Constitution of the United States or Indiana, by the provisions of this rule, or by other rules promulgated by the Indiana Supreme Court. If these rules do not cover a specific evidence issue, common or statutory law shall apply. The word "judge" in these rules includes referees, commissioners and magistrates.

(c) Rules of privilege. -- The rules and laws with respect to privileges apply at all stages of all actions, cases, and proceedings.

(d) Rules inapplicable. -- The rules, other than those with respect to privileges, do not apply in the following situations:

(1) Preliminary questions of fact. -- The determination of a question of fact preliminary to the admission of evidence, where the court determines admissibility under Rule 104(a).

(2) Miscellaneous proceedings. -- Proceedings relating to extradition, sentencing, probation, or parole, issuance of criminal summonses or warrants for arrest or search, preliminary juvenile matters, direct contempt, bail hearings, small claims, and grand jury proceedings.

# KENTUCKY

## *KRE Rule 1101 (2015)*

### Rule 1101. Applicability of rules.

#### (a) Courts.

These rules apply to all the courts of this Commonwealth in the actions, cases, and proceedings and to the extent hereinafter set forth.

#### (b) Proceedings generally.

These rules apply generally to civil actions and proceedings and to criminal cases and proceedings, except as provided in subdivision (d) of this rule.

#### (c) Rules on privileges.

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

#### (d) Rules inapplicable.

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

##### (1) Preliminary questions of fact.

The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under KRE 104.

##### (2) Grand jury.

Proceedings before grand juries.

##### (3) Small claims.

Proceedings before the small claims division of the District Courts.

##### (4) Summary contempt proceedings.

Contempt proceedings in which the judge is authorized to act summarily.

##### (5) Miscellaneous proceedings.

Proceedings for extradition or rendition; preliminary hearings in criminal cases;

sentencing by a judge; granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

## LOUISIANA

*La CE Art 1101 (2015)*

### Art. 1101. Applicability

#### A. Proceedings generally; rule of privilege.

(1) Except as otherwise provided by legislation, the provisions of this Code shall be applicable to the determination of questions of fact in all contradictory judicial proceedings and in proceedings to confirm a default judgment. Juvenile adjudication hearings in delinquency proceedings shall be governed by the provisions of this Code applicable to civil cases. Juvenile adjudication hearings in delinquency proceedings shall be governed by the provisions of this Code applicable to criminal cases.

(2) Furthermore, except as otherwise provided by legislation, Chapter 5 of this Code with respect to testimonial privileges applies to all stages of all actions, cases, and proceedings where there is power to subpoena witnesses, including administrative, juvenile, legislative, military courts-martial, grand jury, arbitration, medical review panel, and judicial proceedings, and the proceedings enumerated in Paragraphs B and C of this Article.

B. Limited applicability. -- Except as otherwise provided by Article 1101(A)(2) and other legislation, in the following proceedings, the principles underlying this Code shall serve as guides to the admissibility of evidence. The specific exclusionary rules and other provisions, however, shall be applied only to the extent that they tend to promote the purposes of the proceeding.

(1) Worker's compensation cases.

(2) Child custody cases.

(3) Revocation of probation hearings.

(4) Preliminary examinations in criminal cases, and the court may consider evidence that would otherwise be barred by the hearsay rule.

(5) All proceedings before mayors' courts and justice of the peace courts.

(6) Peace bond hearings.

(7) Extradition hearings.

(8) Hearings on motions and other summary proceedings involving questions of fact not dispositive of or central to the disposition of the case on the merits, or to the dismissal of the case, excluding in criminal cases hearings on motions to suppress evidence and hearings to determine mental capacity to proceed.

C. Rules inapplicable. -- Except as otherwise provided by Article 1101(A)(2) and other legislation, the provisions of this Code shall not apply to the following:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Article 104.

(2) Proceedings with respect to release on bail.

(3) Disposition hearings in juvenile cases.

(4) Sentencing hearings except as provided in Code of Criminal Procedure Article 905.2 in capital cases.

(5) Small claims court proceedings except as provided in R.S. 13:5203 and 13:5207.

(6) Proceedings before grand juries except as provided by Code of Criminal Procedure Article 442.

D. Discretionary applicability. -- Notwithstanding the limitations on the applicability of this Code stated in Paragraphs A, B, and C of this Article, in all judicial proceedings a court may rely upon the provisions of this Code with respect to judicial notice, authentication and identification, and proof of contents of writings, recordings, and photographs as a basis for admitting evidence or making a finding of fact.

*La. C.Cr.P. Art. 442 (2015)*

Art. 442. Evidence to be received by grand jury

A grand jury shall hear all evidence presented by the district attorney. It may hear evidence for the defendant, but is under no duty to do so.

When the grand jury has reason to believe that other available evidence will explain the charge, it should order the evidence produced.

A grand jury should receive only legal evidence and such as is given by witnesses produced, or furnished by documents and other physical evidence. However, no indictment shall be quashed or conviction reversed on the ground that the indictment was based, in whole or in part, on illegal evidence, or on the ground that the grand jury has violated a provision of this article.

## **MAINE**

*Me R Evid 1101 (2014)*

### Rule 1101. Applicability of Rules

(a) Rules Applicable. Except as otherwise provided in (b), these rules apply to all actions and proceedings in the Supreme Judicial Court, the Superior Court, the District Court, and the Probate Court.

(b) Rules Inapplicable. The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence except as otherwise provided in Rule 104.

(2) Grand Jury. Proceedings before grand juries.

(3) Juvenile Proceedings. To proceedings under the Maine Juvenile Code other than (a) probable cause determinations in bindover hearings and (b) adjudicatory hearings.

(4) Miscellaneous Proceedings. Statutory small claims proceedings in the District Court prior to the rendition of judgment; proceedings for sentencing; issuance of warrants; proceedings with respect to release on bail or otherwise; proceedings for granting of probation or parole; proceedings on probation or parole violations; and proceedings for determination of probable cause.

(5) Contempt Proceedings. Those contempt proceedings in which the court may act summarily.

# MARYLAND

## *Md Rule 5-101 (2015)*

### Rule 5-101. Scope

(a) Generally. Except as otherwise provided by statute or rule, the rules in this Title apply to all actions and proceedings in the courts of this State.

(b) Rules inapplicable. The rules in this Title other than those relating to the competency of witnesses do not apply to the following proceedings:

- (1) Proceedings before grand juries;
- (2) Proceedings for extradition or rendition;
- (3) Direct contempt proceedings in which the court may act summarily;
- (4) Small claim actions under Rule 3-701 and appeals under Rule 7-112 (d)(2);
- (5) Issuance of a summons or warrant under Rule 4-212;
- (6) Pretrial release under Rule 4-216, 4-216.1, or 4-216.2 or release after conviction under Rule 4-349;
- (7) Preliminary hearings under Rule 4-221;
- (8) Post-sentencing procedures under Rule 4-340;
- (9) Sentencing in non-capital cases under Rule 4-342;
- (10) Issuance of a search warrant under Rule 4-601;
- (11) Detention and shelter care hearings under Rule 11-112; and
- (12) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was traditionally not bound by the common-law rules of evidence.

## **MASSACHUSETTS**

*ALM GL 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**

*MRE 1101 (2015)*

### Rule 1101 Applicability.

(a) Rules applicable. Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of this state.

(b) Rules inapplicable. The rules other than those with respect to privileges do not



apply in the following situations and proceedings:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings. Proceedings for extradition or rendition; 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.

(4) Contempt proceedings. Contempt proceedings in which the court may act summarily.

(5) Small claims. Small claims division of the district court.

(6) In camera custody hearings. In camera proceedings in child custody matters to determine a child's custodial preference.

(7) Proceedings involving juveniles. Proceedings in the family division of the circuit court wherever MCR subchapter 3.900 states that the Michigan Rules of Evidence do not apply.

(8) Preliminary examinations. At preliminary examinations in criminal cases, hearsay is admissible to prove, with regard to property, the ownership, authority to use, value, possession and entry.

(9) Domestic Relations Matters. The court's consideration of a report or recommendation submitted by the friend of the court pursuant to MCL 552.505(1)(g) or (h).

(10) Mental Health Hearings. In hearings under Chapters 4, 4A, 5, and 6 of the Mental Health Code, MCL 330.1400 et seq., the court may consider hearsay data that are part of the basis for the opinion presented by a testifying mental health expert.

## MINNESOTA

*Minn R Evid 1101 (2014)*

### Rule 1101. Rules Applicable

(a) Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of this state.

(b) Rules inapplicable. --The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary questions of fact. --The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. --Proceedings before grand juries.

(3) Miscellaneous proceedings. --Proceedings for extradition or rendition; probable cause hearings; 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.

(4) Contempt proceedings in which the court may act summarily.

## **MISSISSIPPI**

*Miss R Evid 1101 (2014)*

### Rule 1101. Applicability of rules.

(a) Courts and proceedings. -- Except as otherwise provided by subdivision (b), these rules apply to all actions and proceedings in the courts of the State of Mississippi.

(b) Rules inapplicable. -- Except for the rules pertaining to privileges, these rules do not apply in the following situations:

(1) Preliminary questions of fact. -- The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. -- Proceedings before grand juries.

(3) Miscellaneous proceedings. -- Proceedings for extradition or rendition; probable cause hearings in criminal cases and youth court cases; sentencing; disposition hearings; granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt proceedings. -- Contempt proceedings in which the court may act summarily.

## **MONTANA**

*Title 26, Ch. 10, Rule 101, MCA (2015)*

### Rule 101 Scope

- (a) Proceedings generally. These rules govern all proceedings in all courts in the state of Montana with the exceptions stated in this rule.
- (b) Rules of privilege. The rules with respect to privileges found in Article V apply at all stages of all actions, cases and proceedings.
- (c) Rules inapplicable. The rules (other than those with respect to privileges) do not apply in the following situations:
- (1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).
  - (2) Grand jury. Proceedings before grand juries.
  - (3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations and proceedings on applications for leave to file informations in criminal cases; sentencing; dispositional hearings in youth court proceedings; granting or revoking probation or parole; issuance of warrants for arrest, criminal summonses and notices to appear, and search warrants; and proceedings with respect to release on bail or otherwise.
  - (4) Summary proceedings. Proceedings, other than motions for summary judgment, where the court is authorized by law to act summarily.
  - (5) Other miscellaneous proceedings. Ex parte matters; and proceedings, when authorized by law, which are uncontested or nonadversary.

## **NEBRASKA**

*NE Crim R 3.6 (2015)*

### § 6.3 Preserving Grand Jury Secrecy

- (a) Courthouse Decorum. -- When a grand jury convenes, no one may be in the

courthouse to observe or monitor persons who enter and leave the grand jury chambers. This rule does not apply to: (1) grand jurors; (2) witnesses; (3) government attorneys, agents, and employees; (4) court personnel; (5) private attorneys with clients called to appear as witnesses at a grand jury session in progress or about to begin; and (6) others that the court specifically authorizes to be present.

(b) Grand Jury Files.

(1) Maintained Under Seal. -- Records that the clerk maintains in the grand jury docket are restricted documents, maintained under seal, and available for review or unsealed only upon a judge's order. This rule applies to: grand jury subpoenas; transcripts of testimony; the clerk's docket of grand jury proceedings; and motions and orders relating to grand jury subpoenas, true bills, and no bills.

(2) Access; Witness's Attorney. -- An attorney of record for a person subpoenaed to appear or produce documents at a grand jury proceeding may move for an order allowing access to a copy of the grand jury subpoena served on the client and the documents relating to that subpoena.

(c) Free Press-Fair Trial Provisions.

(1) Attorneys. -- An attorney participating in or associated with the investigation may not make an extrajudicial statement that a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or is not necessary to: inform the public the investigation is underway or to describe the investigation's general scope; obtain assistance in a suspect's apprehension; warn the public of any danger; or otherwise aid in the investigation.

(2) Court Personnel. -- No court personnel, including employees or subcontractors retained by court reporters, may disclose to any person, without the court's authorization, information outside the court's public records relating to a pending grand jury proceeding or a criminal case.

(d) Contact With Grand Jurors.

(1) By Defendant or Witness. -- Without the court's leave, no actual or potential defendant or witness, or attorney or other person acting on the defendant's or witness's behalf, may contact or speak with any actual or potential grand juror about grand jury service.

(2) By the Government. -- Without the court's leave, no government attorney or person acting on the attorney's behalf may contact or speak with any grand juror or potential grand juror about grand jury service. However, contacts may be made on the record during grand jury proceedings in connection with the administration of the grand jury.

## **NEVADA**

*Nev Rev Stat Ann 172.135 (2014)*

### 172.135. Evidence receivable before grand jury.

1. In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them or furnished by legal documentary evidence or by the deposition of witnesses taken as provided in this Title, except that the grand jury may receive any of the following:

(a) An affidavit or declaration from an expert witness or other person described in NRS 50.315 in lieu of personal testimony or a deposition.

(b) An affidavit of an owner, possessor or occupant of real or personal property or other person described in NRS 172.137 in lieu of personal testimony or a deposition.

2. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

## **NEW HAMPSHIRE**

*NH Evid Rule 1101 (2015)*

### Rule 1101. Applicability of Rules

(a) Courts. --These rules apply to the proceedings in the district and probate divisions of the circuit court, the superior court, and the supreme court.

(b) Proceedings Generally. --These rules apply generally to all civil and criminal proceedings unless otherwise provided by the constitution or statutes of the State of New Hampshire or these rules.

(c) Rule of Privilege. --The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

(d) Rules Inapplicable. --The rules (other than with respect to privileges) do not apply in the following situations:

(1) Preliminary Questions of Fact. --The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104.

(2) Grand Jury. --Proceedings before grand juries.

(3) Miscellaneous Proceedings. --Proceedings for extradition or rendition; preliminary examinations in criminal cases; juvenile certification proceedings under RSA 169-B:24; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; contempt proceedings in which the court may act summarily; proceedings with respect to parole revocation or probation violations; recommittal hearings; divorce cases; and domestic violence proceedings.

## **NEW JERSEY**

*NJ R Evid 101 (2015)*

### Rule 101. Scope; Definitions

(a) *Applicability; exceptions.*

(1) *Privileges.* --The provisions of Rule 500 (privileges) shall apply, without relaxation, to all proceedings and inquiries, whether formal, informal, public or private, and to all branches and agencies of government.

(2) *Court proceedings; relaxation.* --These rules of evidence shall apply in all proceedings, civil or criminal, conducted by or under the supervision of a court. Except as provided by paragraph (a)(1) of this rule, these rules may be relaxed in the following instances to admit relevant and trustworthy evidence in the interest of justice:

(A) actions within the cognizance of the Small Claims Section of the Special Civil Part of the Superior Court, Law Division, and the Small Claims Division of the Tax Court whether or not the action was instituted in a Small Claims Section or Division.

(B) in accordance with a statutory provision;

(C) proceedings in a criminal or juvenile delinquency action in which information is presented for the court's use in exercising a sentencing or other dispositional discretion, including bail and pretrial intervention and other diversionary proceedings;

(D) to the extent permitted by law, proceedings to establish probable cause, including grand jury proceedings, probable cause hearings, and ex parte applications;

(E) proceedings to determine the admissibility of evidence under these rules or other law.

(3) *Administrative proceedings.* --Except as otherwise provided by paragraph (a)(1) of this rule, proceedings before administrative agencies shall not be governed by these rules.

(4) *Undisputed facts.* --If there is no bona fide dispute between the parties as to a relevant fact, the judge may permit that fact to be established by stipulation or binding admission. In civil proceedings the judge may also permit that fact to be proved by any relevant evidence, and exclusionary rules shall not apply, except Rule 403 or a valid claim of privilege.

(5) *Affidavit in lieu of testimony.* --These rules shall not be construed to prohibit the use of an affidavit in lieu of oral testimony to the extent permitted by law.

(b) *Definitions.* --As used in these rules, the following terms shall have the meaning hereafter set forth unless the context otherwise indicates:

(1) "Burden of persuasion" means the obligation of a party to meet the requirements of a rule of law that the fact be proved either by a preponderance of the evidence or by clear and convincing evidence or beyond a reasonable doubt, as the case may be.

(2) "Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a judgment or peremptory finding against that party on an issue of fact.

(3) "Writing" has the meaning given in the definition contained in Rule 801(e).

(c) *Repeal.* --The adoption of these rules of evidence shall not operate to repeal any existing statute by implication. However, where an existing statute has been expressly superseded pursuant to N.J.S.A. 2A:84A-40 by an official note heretofore or hereafter appended to a rule of evidence, such statute shall have no further force or effect.

# NEW MEXICO

*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.

## **NEW YORK**

### *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.

## **NORTH CAROLINA**

*NC Gen Stat 8C-1, Rule 1101 (2014)*

### Rule 1101. Applicability of rules

(a) *Applicability; exceptions.*

(1) *Privileges.* --The provisions of Rule 500 (privileges) shall apply, without relaxation, to all proceedings and inquiries, whether formal, informal, public or private, and to all branches and agencies of government.

(2) *Court proceedings; relaxation.* --These rules of evidence shall apply in all proceedings, civil or criminal, conducted by or under the supervision of a court. Except as provided by paragraph (a)(1) of this rule, these rules may be relaxed in the following instances to admit relevant and trustworthy evidence in the interest of justice:

(A) actions within the cognizance of the Small Claims Section of the Special Civil Part of the Superior Court, Law Division, and the Small Claims Division of the Tax Court whether or not the action was instituted in a Small Claims Section or Division.

(B) in accordance with a statutory provision;



(C) proceedings in a criminal or juvenile delinquency action in which information is presented for the court's use in exercising a sentencing or other dispositional discretion, including bail and pretrial intervention and other diversionary proceedings;

(D) to the extent permitted by law, proceedings to establish probable cause, including grand jury proceedings, probable cause hearings, and ex parte applications;

(E) proceedings to determine the admissibility of evidence under these rules or other law.

(3) *Administrative proceedings.* --Except as otherwise provided by paragraph (a)(1) of this rule, proceedings before administrative agencies shall not be governed by these rules.

(4) *Undisputed facts.* --If there is no bona fide dispute between the parties as to a relevant fact, the judge may permit that fact to be established by stipulation or binding admission. In civil proceedings the judge may also permit that fact to be proved by any relevant evidence, and exclusionary rules shall not apply, except Rule 403 or a valid claim of privilege.

(5) *Affidavit in lieu of testimony.* --These rules shall not be construed to prohibit the use of an affidavit in lieu of oral testimony to the extent permitted by law.

(b) *Definitions.* --As used in these rules, the following terms shall have the meaning hereafter set forth unless the context otherwise indicates:

(1) "Burden of persuasion" means the obligation of a party to meet the requirements of a rule of law that the fact be proved either by a preponderance of the evidence or by clear and convincing evidence or beyond a reasonable doubt, as the case may be.

(2) "Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a judgment or peremptory finding against that party on an issue of fact.

(3) "Writing" has the meaning given in the definition contained in Rule 801(e).

(c) *Repeal.* --The adoption of these rules of evidence shall not operate to repeal any existing statute by implication. However, where an existing statute has been expressly superseded pursuant to N.J.S.A. 2A:84A-40 by an official note heretofore or hereafter appended to a rule of evidence, such statute shall have no further force or effect.

# NORTH DAKOTA

## *NDR Ev Rule 1101 (2014)*

### Rule 1101. Applicability of rules

(a) To courts and magistrates. These rules apply to all courts and magistrates of this state.

(b) To cases and proceedings. These rules apply in:

(1) civil cases and proceedings,

(2) special proceedings,

(3) criminal cases and proceedings, and

(4) contempt proceedings, except those in which the court may act summarily.

(c) Rules on privilege. The rules on privilege apply to all stages of a case or proceeding.

(d) Exceptions. These rules, except for those on privilege, do not apply to the following:

(1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;

(2) grand-jury proceedings; and

(3) miscellaneous proceedings, such as:

(A) extradition or rendition;

(B) issuing an arrest warrant, criminal summons, or search warrant;

(C) a preliminary examination in a criminal case;

(D) sentencing;

(E) granting or revoking probation or parole;

(F) considering whether to release on bail or otherwise;

(G) detention hearings;

(H) transfer and dispositional hearings in juvenile court.

(e) Other rules. A rule prescribed by the Supreme Court may provide for admitting or excluding evidence independently from these rules.

# OHIO

*Ohio Crim R 6 (2015)*

## Rule 101. Scope of rules: Applicability; Privileges; Exceptions

- (A) Applicability. These rules govern proceedings in the courts of this state, subject to the exceptions stated in division (C) of this rule.
- (B) Privileges. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings conducted under these rules.
- (C) Exceptions. These rules (other than with respect to privileges) do not apply in the following situations:
- (1) Admissibility determinations. Determinations prerequisite to rulings on the admissibility of evidence when the issue is to be determined by the court under Evid.R. 104.
  - (2) Grand jury. Proceedings before grand juries.
  - (3) Miscellaneous criminal proceedings. Proceedings for extradition or rendition of fugitives; sentencing; granting or revoking probation; proceedings with respect to community control sanctions; issuance of warrants for arrest; criminal summonses and search warrants; and proceedings with respect to release on bail or otherwise.
  - (4) Contempt. Contempt proceedings in which the court may act summarily.
  - (5) Arbitration. Proceedings for those mandatory arbitrations of civil cases authorized by the rules of superintendence and governed by local rules of court.
  - (6) Other rules. Proceedings in which other rules prescribed by the Supreme Court govern matters relating to evidence.
  - (7) Special non-adversary statutory proceedings. Special statutory proceedings of a non-adversary nature in which these rules would by nature be clearly inapplicable.
  - (8) Small claims division. Proceedings in the small claims division of a county or municipal court.

# OREGON

*ORS 132.320 (2014)*

## 132.320 Consideration of Evidence

- (1) Except as provided in subsections (2) to (11) of this section, in the investigation of a charge for the purpose of indictment, the grand jury shall receive no other

evidence than such as might be given on the trial of the person charged with the crime in question.

(2) A report or a copy of a report made by a physicist, chemist, medical examiner, physician, 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 such person in connection with a case which is the subject of a grand jury proceeding, shall, when certified by such person as a report made by such person or as a true copy thereof, be received in evidence in the grand jury proceeding.

(3) An affidavit of a witness who is unable to appear before the grand jury shall be received in evidence in the grand jury proceeding if, upon application by the district attorney, the presiding judge for the judicial district in which the grand jury is sitting authorizes the receipt after good cause has been shown for the witness' inability to appear. An affidavit taken in another state or territory of the United States, the District of Columbia or in a foreign country must be authenticated as provided in ORS chapter 194 before it can be used in this state.

(4) A grand jury that is investigating a charge of criminal driving while suspended or revoked under ORS 811.182 may receive in evidence an affidavit of a peace officer with a report or copy of a report of the peace officer concerning the peace officer's investigation of the violation of ORS 811.182 by the defendant.

(5) A grand jury may receive testimony of a witness by means of simultaneous television transmission allowing the grand jury and district attorney to observe and communicate with the witness and the witness to observe and communicate with the grand jury and the district attorney.

(6) A grand jury that is investigating a charge of failure to appear under ORS 133.076, 153.992, 162.195 or 162.205 may receive in evidence an affidavit of a court employee certifying that the defendant failed to appear as required by law and setting forth facts sufficient to support that conclusion.

(7)

(a) Except as otherwise provided in this subsection, a grand jury may receive in evidence through the testimony of one peace officer involved in the criminal investigation under grand jury inquiry information from an official report of another peace officer involved in the same criminal investigation concerning the other peace officer's investigation of the matter before the grand jury. The statement of a person suspected of committing an offense or inadmissible hearsay of persons other than the peace officer who compiled the official report may not be presented to a grand jury under this paragraph.

(b) If the official report contains evidence other than chain of custody, venue or the name of the person suspected of committing an offense, the grand jurors must be notified that the evidence is being submitted by report and that the peace officer

who compiled the report will be made available for testimony at the request of the grand jury. When a grand jury requests the testimony of a peace officer under this paragraph, the peace officer may present sworn testimony by telephone if requiring the peace officer's presence before the grand jury would constitute an undue hardship on the peace officer or the agency that employs or utilizes the peace officer.

(8) A grand jury that is investigating a charge of failure to report as a sex offender under ORS 181.599 may receive in evidence certified copies of the form required by ORS 181.603 (2) and sex offender registration forms and an affidavit of a representative of the Oregon State Police, as keepers of the state's sex offender registration records, certifying that the certified copies of the forms constitute the complete record for the defendant.

(9) The grand jury is not bound to hear evidence for the defendant, but it shall weigh all the evidence submitted to it; and when it believes that other evidence within its reach will explain away the charge, it should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

(10) A grand jury that is investigating a charge of driving while under the influence of intoxicants in violation of ORS 813.010 may receive in evidence an affidavit of a peace officer regarding any or all of the following:

(a) Whether the defendant was driving.

(b) Whether the defendant took or refused to take tests under any provision of ORS chapter 813.

(c) The administration of tests under any provision of ORS chapter 813 and the results of such tests.

(d) The officer's observations of physical or mental impairment of the defendant.

(11)

(a) A grand jury may receive in evidence an affidavit of a representative of a financial institution for the purpose of authenticating records of the financial institution.

(b) As used in this subsection, "financial institution " means a financial institution as defined in ORS 706.008, an entity that regularly issues, processes or services credit cards or any other comparable entity that regularly produces financial records.

# PENNSYLVANIA

*Pa R Crim P 556.11 (2015)*

## Rule 556.11. Proceedings When Case Presented to Grand Jury

(A) A grand jury has the authority to:

(1) inquire into violations of criminal law through subpoenaing witnesses and documents; and

(2) based upon evidence it has received, including hearsay evidence as permitted by law, or upon a presentment issued by an investigating grand jury, if the grand jury finds the evidence establishes a *prima facie* case that (1) an offense has been committed and (2) the defendant has committed it, indict defendant for an offense under the criminal laws of the Commonwealth of Pennsylvania; or

(3) decline to indict.

(B) After a grand jury has considered the evidence presented, the grand jury shall vote whether to indict the defendant. The affirmative vote of at least 12 grand jurors is required to indict.

(C) In cases in which the grand jury votes to indict, an indictment shall be prepared setting forth the offenses on which the grand jury has voted to indict. The indictment shall be signed by the grand jury foreperson, or deputy foreperson if the foreperson is unavailable, and returned to the supervising judge.

(D) Upon receipt of the indictment, the supervising judge shall:

(1) provide a copy of the indictment to the Commonwealth authorizing the attorney to prepare an information pursuant to Rule 560; and

(2) forward the indictment to the clerk of courts, or issue an arrest warrant, if the subject of the indictment has not been arrested on the charges contained in the indictment.

(E) At the request of the attorney for the Commonwealth, the supervising judge shall order the indictment to be sealed.

(F) In cases in which the grand jury does not vote to indict, the foreperson promptly and in writing shall so report to the supervising judge who immediately shall dismiss the complaint and shall notify the clerk of courts of the dismissal.

## **RHODE ISLAND**

*RI R Evid Art I, Rule 101 (2015)*

### Rule 101. Scope and applicability of rules.

(A) *Rules Applicable.* To the extent and with the exceptions stated below, these rules govern proceedings in the courts of this state and to the extent provided by the Administrative Procedure Act to contested administrative actions and proceedings;

(B) *Rules Inapplicable.* The rules (other than those with respect to privileges, which shall apply at all stages of all actions, cases, and proceedings), do not apply in the following situations;

(1) *Preliminary Questions of Fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the trial justice under Rule 104.

(2) *Grand Jury.* Proceedings before grand juries.

(3) *Miscellaneous Proceedings.* Statutory small claims proceeding in the district court; motions for leave to issue a writ of attachment; applications for a temporary restraining order; applications for the appointment of a temporary receiver; motions for a stay of judgment; motions for a preliminary injunction to the extent provided by Rule 65, R.I.R.C.P.; proceedings for extradition or rendition; proceedings for sentencing; issuance of warrants; proceedings with respect to release on bail or otherwise; proceedings for granting of probation or parole; and proceedings on probation or parole violations.

(4) *Contempt Proceedings.* Those contempt proceedings in which the court may act summarily.

## **SOUTH CAROLINA**

*Rule 1101, SCRE (2014)*

### Rule 1101. Applicability of Rules

(A) *Rules Applicable.* To the extent and with the exceptions stated below, these rules govern proceedings in the courts of this state and to the extent provided by the Administrative Procedure Act to contested administrative actions and proceedings;

(B) *Rules Inapplicable.* The rules (other than those with respect to privileges, which shall apply at all stages of all actions, cases, and proceedings), do not apply in the following situations;

(1) *Preliminary Questions of Fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the trial justice under Rule 104.

(2) *Grand Jury.* Proceedings before grand juries.

(3) *Miscellaneous Proceedings.* Statutory small claims proceeding in the district court; motions for leave to issue a writ of attachment; applications for a temporary restraining order; applications for the appointment of a temporary receiver; motions for a stay of judgment; motions for a preliminary injunction to the extent provided by Rule 65, R.I.R.C.P.; proceedings for extradition or rendition; proceedings for sentencing; issuance of warrants; proceedings with respect to release on bail or otherwise; proceedings for granting of probation or parole; and proceedings on probation or parole violations.

(4) *Contempt Proceedings.* Those contempt proceedings in which the court may act summarily.

## TEXAS

### *Tex Evid R 101 (2013)*

#### Rule 101 Title, Scope, and Applicability of Rules; Definitions

(a) *Title.* --These rules may be cited as the Texas Rules of Evidence.

(b) *Scope.* --These rules apply to proceedings in Texas courts except as otherwise provided in subdivisions (d)-(f).

(c) *Rules on Privilege.* --The rules on privilege apply to all stages of a case or proceeding.

(d) *Exception for Constitutional or Statutory Provisions or Other Rules.* --Despite these rules, a court must admit or exclude evidence if required to do so by the United States or Texas Constitution, a federal or Texas statute, or a rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals. If possible, a court should resolve by reasonable construction any inconsistency between these rules and applicable constitutional or statutory provisions or other rules.

(e) *Exceptions.* --These rules - except for those on privilege - do not apply to:



- (1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
- (2) grand jury proceedings; and
- (3) the following miscellaneous proceedings:
  - (A) an application for habeas corpus in extradition, rendition, or interstate detainer proceedings;
  - (B) an inquiry by the court under Code of Criminal Procedure article 46B.004 to determine whether evidence exists that would support a finding that the defendant may be incompetent to stand trial;
  - (C) bail proceedings other than hearings to deny, revoke, or increase bail;
  - (D) hearings on justification for pretrial detention not involving bail;
  - (E) proceedings to issue a search or arrest warrant; and
  - (F) direct contempt determination proceedings.
- (f) *Exception for Justice Court Cases.* --These rules do not apply to justice court cases except as authorized by Texas Rule of Civil Procedure 500.3.
- (g) *Exception for Military Justice Hearings.* --The Texas Code of Military Justice, Tex. Gov't Code §§ 432.001-432.195, governs the admissibility of evidence in hearings held under that Code.
- (h) *Definitions.* --In these rules:
  - (1) "civil case" means a civil action or proceeding;
  - (2) "criminal case" means a criminal action or proceeding, including an examining trial;
  - (3) "public office" includes a public agency;
  - (4) "record" includes a memorandum, report, or data compilation;
  - (5) a "rule prescribed by the United States or Texas Supreme Court or the Texas Court of Criminal Appeals" means a rule adopted by any of those courts under statutory authority;
  - (6) "unsworn declaration" means an unsworn declaration made in accordance with Tex. Civ. Prac. & Rem. Code § 132.001; and
  - (7) a reference to any kind of written material or any other medium includes electronically stored information.

## UTAH

### *Utah R Evid Rule 1101 (2014)*

#### Rule 1101. Applicability of rules

(a) *Proceedings generally.* -- These rules apply to all actions and proceedings in the courts of this state except as otherwise provided in Subdivisions (c) and (d). They apply generally to civil actions and proceedings, criminal cases and contempt proceedings except those in which the court may act summarily.

(b) *Rule of privilege.* -- The rule with respect to privileges applies at all stages of all actions, cases and proceedings.

(c) *Rules Inapplicable.* -- The rules (other than with respect to privileges) do not apply in the following situations:

(1) *Preliminary questions of fact.* -- The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104.

(2) *Grand jury.* -- Proceedings before grand juries.

(3) *Miscellaneous proceedings.* -- Proceedings for extradition or rendition; 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.

(d) *Reliable hearsay in criminal preliminary examinations.* -- In a criminal preliminary examination, reliable hearsay shall be admissible as provided under Rule 1102.

## VERMONT

### *VRE Rule 1101 (2015)*

#### Rule 1101. Applicability of Rules

(a) Rules applicable. -- Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of this state.

(b) Rules inapplicable. -- The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary questions of fact. -- The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. -- Proceedings before grand juries.

(3) Miscellaneous proceedings. -- Proceedings for extradition or rendition; inquest proceedings; except as otherwise provided by statute or rule promulgated by the Supreme Court, sentencing or granting or revoking probation; finding probable cause for arrests without warrant and issuance of citations, warrants for arrest, criminal summonses, and search warrants.

(4) Contempt. -- Those contempt proceedings in which the court may act summarily.

(5) Small claims. -- Small claims proceedings.

(6) Statutory exceptions. -- Proceedings in which all or part of the rules of evidence are made inapplicable by statute.

## VIRGINIA

*Va Sup Ct R 2:1101 (2013)*

### Rule 2: 1101. Applicability of Evidentiary Rules

(a) *Proceedings to which applicable generally.* --Evidentiary rules apply generally to (1) all civil actions and (2) proceedings in a criminal case (including preliminary hearings in criminal cases), and to contempt proceedings (except contempt proceedings in which the court may act summarily), in the Supreme Court of Virginia, the Court of Appeals of Virginia, the State Corporation Commission (when acting as a court of record), the circuit courts, the general district courts (except when acting as a small claims court as provided by statute), and the juvenile and domestic relations district courts.

(b) *Law of privilege.* --The law with respect to privileges applies at all stages of all actions, cases, and proceedings.

(c) *Permissive application.* --Except as otherwise provided by statute or rule, adherence to the Rules of Evidence (other than with respect to privileges) is permissive, not mandatory, in the following situations:

(1) Criminal proceedings other than (i) trial, (ii) preliminary hearings, (iii) sentencing proceedings before a jury, and (iv) capital murder sentencing hearings.

(2) Administrative proceedings.

# WASHINGTON

*Wash ER 1101 (2014)*

## Rule 1101. Applicability of rules

(a) *Courts generally.* Except as otherwise provided in section (c), these rules apply to all actions and proceedings in the courts of the state of Washington. The terms "judge" and "court" in these rules refer to any judge of any court to which these rules apply or any other officer who is authorized by law to hold any hearing to which these rules apply.

(b) *Law with respect to privilege.* The law with respect to privileges applies at all stages of all actions, cases, and proceedings.

(c) *When rules need not be applied.* The rules (other than with respect to privileges, the rape shield statute, and ER 412) need not be applied in the following situations:

(1) *Preliminary questions of fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

(2) *Grand jury.* Proceedings before grand juries and special inquiry judges.

(3) *Miscellaneous proceedings.* Proceedings for extradition or rendition; detainer proceedings under RCW 9.100; preliminary determinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; contempt proceedings in which the court may act summarily; habeas corpus proceedings; small claims court; supplemental proceedings under RCW 6.32; coroners' inquests; preliminary determinations in juvenile court; juvenile court hearings on declining jurisdiction; disposition, review, and permanency planning hearings in juvenile court; dispositional determinations related to treatment for alcoholism, intoxication, or drug addiction under RCW 70.96A; and dispositional determinations under the Civil Commitment Act, RCW 71.05.

(4) *Applications for protection orders.* Protection order proceedings under RCW 7.90, 7.92, 10.14, 26.50, and 74.34. Provided when a judge proposes to consider information from a criminal or civil database, the judge shall disclose the information to each party present at the hearing; on timely request, provide each party with an opportunity to be heard; and take appropriate measures to alleviate litigants' safety concerns. The judge has discretion not to disclose information that he or she does not propose to consider.

(d) *Arbitration hearings.* In a mandatory arbitration hearing under RCW 7.06, the admissibility of evidence is governed by MAR 5.3.

## **WEST VIRGINIA**

*WVRE, Rule 1101 (2015)*

### Rule 1101. Applicability

(a) Rules applicable. Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of this state.

(b) Rules inapplicable. Unless otherwise provided by rules of the Supreme Court of Appeals, these rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings. Sentencing; granting or revoking probation or supervised release; issuance of warrants for arrest, criminal summonses and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt proceedings. Contempt proceedings in which the court may act summarily.

(5) Depositions. Depositions are governed by the Rules of Civil Procedure.

## **WISCONSIN**

*Wis Stat 911.01 (2014)*

### 911.01. Applicability of rules of evidence.

#### (1) COURTS AND COURT COMMISSIONERS.

Chapters 901 to 911 apply to the courts of the state of Wisconsin, including municipal courts and circuit, supplemental, and municipal court commissioners, in the proceedings and to the extent hereinafter set forth except as provided in s. 972.11 . The word "judge" in chs. 901 to 911 means judge of a court of record, municipal judge, or circuit, supplemental, or municipal court commissioner.

(2) PROCEEDINGS GENERALLY.

Chapters 901 to 911 apply generally to proceedings in civil and criminal actions.

(3) PRIVILEGES; OATH. Chapter 905 with respect to privileges applies at all stages of all actions, cases and proceedings; s. 906.03 applies at all stages of all actions, cases and proceedings except as provided in ss. 901.04 (1) and 911.01 (4), and ch. 908 .

(4) RULES OF EVIDENCE INAPPLICABLE. Chapters 901 to 911, other than ch. 905 with respect to privileges or s. 901.05 with respect to admissibility, do not apply in the following situations:

(a) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the judge under s. 901.04 (1) .

(b) Grand jury; John Doe proceedings. Proceedings before grand juries or a John Doe proceeding under s. 968.26 .

(c) Miscellaneous proceedings. Proceedings for extradition or rendition; sentencing, granting or revoking probation, modification of a bifurcated sentence under s. 302.113 (9g), or adjustment of a bifurcated sentence under s. 973.195 (1r) or 973.198; issuance of subpoenas or warrants under s. 968.375, arrest warrants, criminal summonses, and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1r) (c); proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969; or proceedings under s. 165.76 (6) to compel provision of a biological specimen for deoxyribonucleic acid analysis.

(d) Small claims actions. Proceedings under ch. 799, except jury trials.

(5) RESTITUTION HEARINGS.

(a) In a restitution hearing under s. 973.20 (13), the rules of evidence are subject to waiver under s. 973.20 (14) (d) .

(b) When hearing evidence as to the factors that determine a restitution order under s. 800.093, the rules of evidence are subject to waiver under s. 800.093 (8) (b) .

## WYOMING

### *WRE Rule 1101 (2014)*

#### Rule 1101. Applicability of rules

(a) Rules applicable. -- Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of this state.

(b) Rules inapplicable. -- The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary Questions of Fact. -- The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a);

(2) Grand jury. -- Proceedings before grand juries;

(3) Miscellaneous Proceedings. -- Proceedings for extradition or rendition; preliminary examination in criminal cases; sentencing, granting or revoking probation other than adjudicatory hearings; juvenile proceedings other than adjudicatory hearings; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise;

(4) Contempt Proceedings in which the court may act summarily.