



IMPROVING  
GRAND JURY POLICY  
IN UTAH



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1.

# GRAND JURIES & THE CONSTITUTIONS

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*Grand Juries under state and federal system*

“NO PERSON SHALL BE HELD TO  
ANSWER FOR A CAPITAL, OR  
OTHERWISE INFAMOUS CRIME,  
UNLESS ON A PRESENTMENT OR  
INDICTMENT OF A GRAND JURY...”  
US CONSTITUTION, AMEND V

GRAND JURY RIGHT OF  
U.S. CONST AMENDMENT V  
HAS NOT BEEN INCORPORATED  
| TO THE STATES

“

Offenses... shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The formation of the grand jury and the powers and duties thereof shall be as prescribed by the Legislature.



2.

## FEATURES & LIMITS OF PRELIMINARY HEARINGS

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# OPEN COURT

- ▣ *Good for media outlets*
- ▣ *Limits use of evidence confidential informants*
- ▣ *Chilling effect on vulnerable victims/witnesses*
- ▣ *Can encourage conviction in court of public opinion even if not bound over for trial*



# CROSS-EXAMINATION

- ▣ *Can be very beneficial for defendants to explore case*
- ▣ *Written “1102” statements are permitted*
- ▣ *Preliminary hearing testimony usually can't be used at trial*
- ▣ *Chilling effect on vulnerable victims/witnesses*

“

Our constitution specifically limits the purpose of preliminary hearings in a manner that can undercut defense counsel's opportunity to cross-examine witnesses at a preliminary hearing and thereby modify the interest counsel has in developing testimony on cross-examination.

State v. Goins, 2017 UT 61, ¶ 41 (Sup.Ct.)

# MAGISTRATE DECIDES PROBABLE CAUSE INSTEAD OF JURY

- ▣ *Judges have very limited ability to weigh witness credibility*
- ▣ *Preliminary hearing magistrate may also be the judge at trial*
- ▣ *Most preliminary hearings end up being waived by the defendant*

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Therefore, magistrates must leave all the weighing of credible but conflicting evidence to the trier of fact and must "view the evidence in a light most favorable to the prosecution[,] resolv[ing] all inferences in favor of the prosecution.

State v. Virgin, 2006 UT 29, ¶ 24, 137 P.3d 787



3.

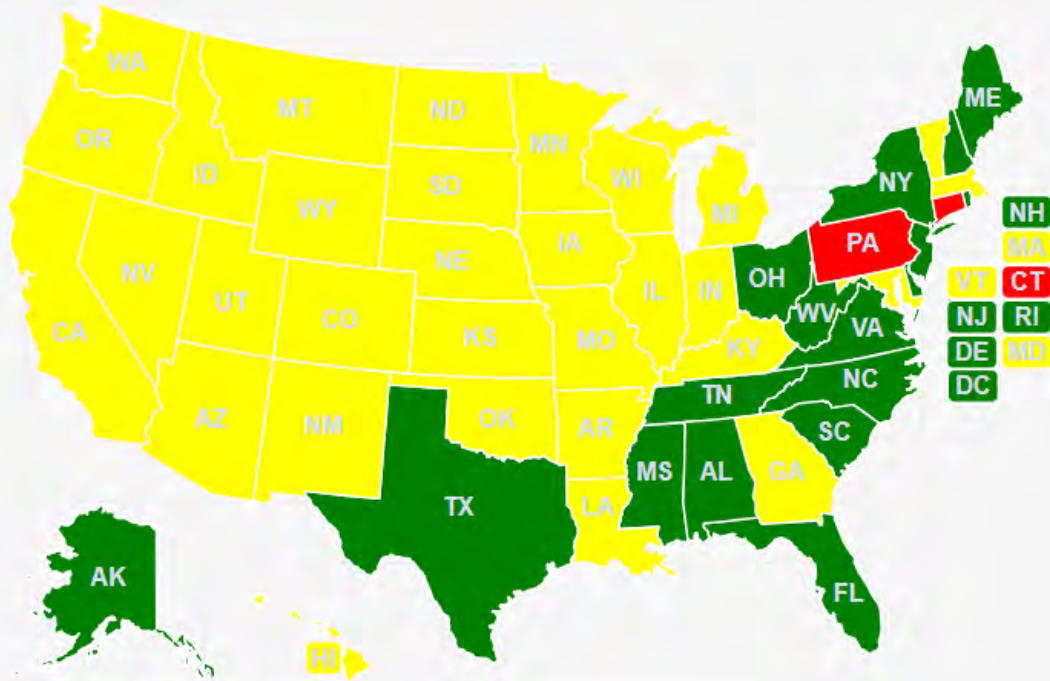
# GRAND JURIES BY STATE

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*Utah is in the minority*



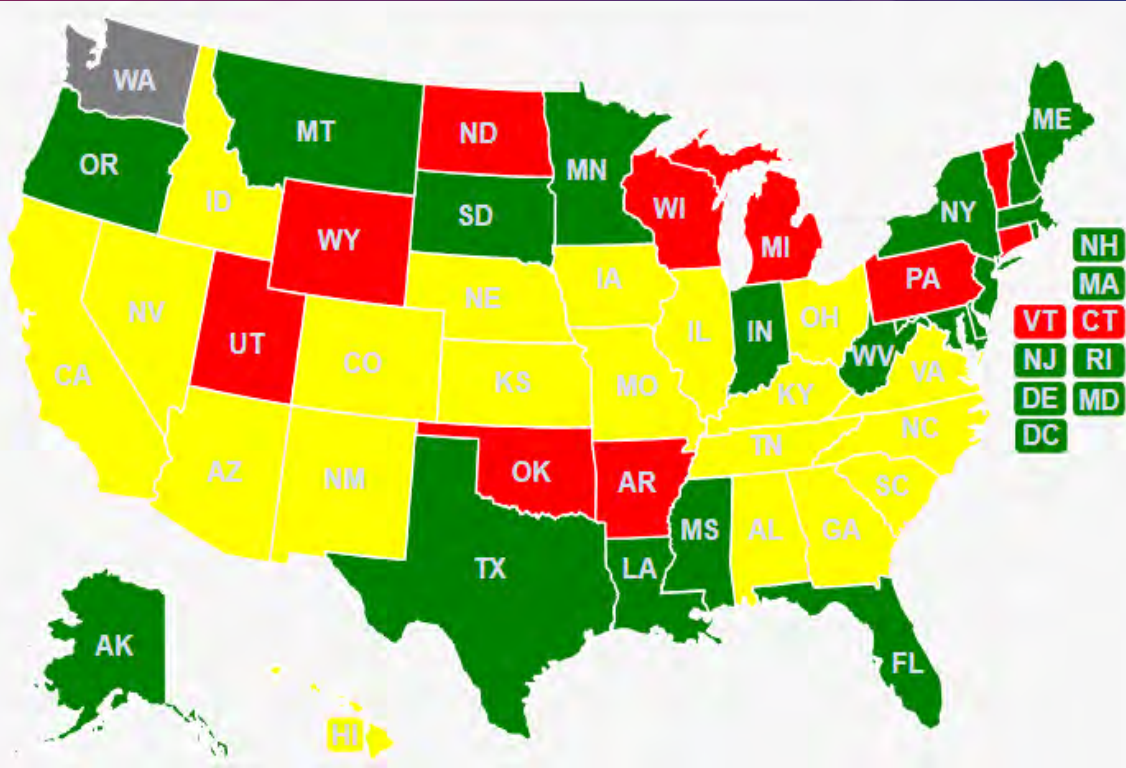
## MAP OF STATE LAWS



**GRAND JURIES ARE REQUIRED**  
**GRAND JURIES ALLOWED**  
**NO CRIMINAL INDICTMENTS**



## MAP OF STATE PRACTICES



**ONLY GRAND JURIES**  
**ONLY PRELIMINARY HEARINGS**  
**BOTH USED**  
**NEITHER**



UTAH IS ONE OF EIGHT STATES  
WITH LAWS THAT ALLOW GRAND  
JURY INDICTMENTS & A LEGAL  
SYSTEM THAT DOESN'T USE THEM





“GOOD CAUSE”

INDUSTRY

“

*When the [prosecutor] certifies in writing to the supervising judge that in his judgment a grand jury is necessary because of criminal activity in the state, the panel shall order a grand jury to be summoned if the panel finds good cause exists.”*

*Utah Code Section 77-10a-2(3)*

“

*In determining whether good cause exists under Subsection (3), the panel shall consider, among other factors, whether a grand jury is needed to help maintain public confidence in the impartiality of the criminal justice process.”*

*Utah Code Section 77-10a-2(4)*



A PANEL OF FIVE JUDGES

WHO CONDUCT PRELIMINARY HEARINGS

DECIDE WHETHER A PRELIM WOULD  
THREATEN PUBLIC CONFIDENCE IN THE  
IMPARTIALITY OF THE JUSTICE SYSTEM

INDUSTRY



# ALTERNATIVE POLICIES FOR EMPANELING A GRAND JURY

## Legislative Control

Identify specific offenses for grand juries:

- ▣ Officer involved shootings resulting in death/injury (i.e. Indiana, Iowa)
- ▣ Public Officials (i.e. Minnesota)
- ▣ Capital Offenses (i.e. Florida)
- ▣ Vulnerable victims (i.e. Idaho)

## Executive Control

Keep preliminary hearings but always have a grand jury empaneled to be used by prosecutors at their discretion. States include:

Alabama	Nevada
Arizona	New Mexico
California	N. Carolina
Georgia	Ohio
Hawaii	S. Carolina
Illinois	Tennessee
Kentucky	Virginia

## Judicial Control

- ▣ Better define “good cause” (2015 HB451 by Rep. M. Roberts, Washington, )
- ▣ Revert from “panel” to “a judge” (Wisconsin, Michigan, Colorado)

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*The District Attorney could get a grand jury to indict a ham sandwich if he wanted to.”*

*Unnamed defense attorney, Democrat & Chronicle (Rochester NY), 1979*

“

*A grand jury could 'indict a ham sandwich', but apparently not a white police officer”*

*Headline in United Kingdom's Independent, Nov 26 2014, regarding verdict involving Michael Brown's Death*

“  
*A preliminary hearing does not  
require a lot of effort from a  
prosecutor.*”

Kent Hart, former Exec. Director of UACDL, to  
Salt Lake Tribune, March 30, 2011, Court: Some  
misdemeanors deserve preliminary hearings



“

The liberal [preliminary hearing] standard does not authorize the courts to second-guess the prosecution's evidence by weighing it against the totality of the evidence in search of the most reasonable inference to be drawn therefrom. Under the probable cause standard, we are required to take the perspective of the reasonable *arresting officer*—and to do so through a lens that gives the benefit of all reasonable inferences to the prosecution. Thus, we ask whether *any officer*, viewing the evidence in the light most favorable to the prosecution, could reasonably conclude that a crime was committed and that the defendant committed it. And in making that assessment we are required to give the benefit of all reasonable inferences to the prosecution.

State v. Jones, 2016 UT 4, ¶ 22, 365 P.3d 1212, 1217 (Sup.Ct.)

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[The grand jury's] historic office has been to provide a shield against arbitrary or oppressive action, by insuring that serious criminal accusations will be brought only upon the considered judgment of a representative body of citizens acting under oath and under judicial instruction and guidance.”

*Justice Potter Stewart, United States v. Mandujano, 1976*



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