

GRAND JURY MODIFICATIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill requires a grand jury subpoena to be issued a certain amount of time before the person is required to testify.

Highlighted Provisions:

This bill:

- ▶ requires a grand jury subpoena to be issued to a minor, who is a victim of crime, at least 72 hours before the victim is required to testify; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-10a-13, as last amended by Laws of Utah 1997, Chapter 372

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-10a-13** is amended to read:

77-10a-13. Location -- Who may be present -- Witnesses -- Witnesses who are subjects -- Evidence -- Contempt -- Notice -- Record of proceedings -- Disclosure.

(1) The managing judge shall designate the place where the grand jury meets. The grand jury may, upon request and with the permission of the managing judge, meet and conduct

30 business any place within the state. Subject to the approval of the managing judge the grand
31 jury shall determine the times at which it meets.

32 (2) (a) Attorneys representing the state, special prosecutors appointed under Section
33 77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and
34 a court reporter or operator of a recording device to record the proceedings may be present
35 while the grand jury is in session.

36 (b) No person other than the jurors may be present while the grand jury is deliberating.

37 (3) (a) The attorneys representing the state and the special prosecutors may subpoena
38 witnesses to appear before the grand jury and may subpoena evidence in the name of the grand
39 jury without the prior approval or consent of the grand jury or the court. The jury may request
40 that other witnesses or evidence be subpoenaed.

41 (b) Subpoenas may be issued in the name of the grand jury to any person located within
42 the state and for any evidence located within the state or as otherwise provided by law.

43 (c) A subpoena requiring a minor, who is a victim of a crime, to testify before a grand
44 jury may not be served less than 72 hours before the victim is required to testify.

45 [~~(c)~~] (d) The managing judge may enter any order necessary to secure compliance with
46 any subpoena issued in the name of the grand jury.

47 (4) (a) Any witness who appears before the grand jury shall be advised, by the attorney
48 for the state or the special prosecutor, of his right to be represented by counsel.

49 (b) A witness who is also a subject as defined in Section 77-10a-1 shall at the time he
50 appears as a witness be advised:

51 (i) of his right to be represented by counsel;

52 (ii) that he is a subject;

53 (iii) that he may claim his privilege against self-incrimination; and

54 (iv) of the general scope of the grand jury's investigation.

55 (c) A witness who is also a target as defined in Section 77-10a-1 shall at the time he
56 appears as a witness, be advised:

57 (i) of his right to be represented by counsel;

58 (ii) that he is a target;
59 (iii) that he may claim his privilege against self-incrimination;
60 (iv) that the attorney for the state, the special prosecutor, or the grand jury is in
61 possession of substantial evidence linking him to the commission of a crime for which he could
62 be charged; and

63 (v) of the general nature of that charge and of the evidence that would support the
64 charge.

65 (d) This Subsection (4) does not require the attorney for the state, the special
66 prosecutor, or the grand jury to disclose to any subject or target the names or identities of
67 witnesses, sources of information, or informants, or disclose information in detail or in a
68 fashion that would jeopardize or compromise any ongoing criminal investigation or endanger
69 any person or the community.

70 (5) (a) The grand jury shall receive evidence without regard for the formal rules of
71 evidence, except the grand jury may receive hearsay evidence only under the same provisions
72 and limitations that apply to preliminary hearings.

73 (b) Any person, including a witness who has previously testified or produced books,
74 records, documents, or other evidence, may present exculpatory evidence to the attorney
75 representing the state or the special prosecutor and request that it be presented to the grand
76 jury, or request to appear personally before the grand jury to testify or present evidence to that
77 body. The attorney for the state or the special prosecutor shall forward the request to the grand
78 jury.

79 (c) When the attorney for the state or the special prosecutor is personally aware of
80 substantial and competent evidence negating the guilt of a subject or target that might
81 reasonably be expected to lead the grand jury not to indict, he shall present or otherwise
82 disclose the evidence to the grand jury before the grand jury is asked to indict that person.

83 (6) (a) The managing judge has the contempt power and authority inherent in the court
84 over which he presides and as provided by statute.

85 (b) When a witness in any proceeding before or ancillary to any grand jury appearance

86 refuses to comply with an order from the managing judge to testify or provide other
87 information, including any book, paper, document, record, recording, or other material without
88 having a recognized privilege, the attorney for the state or special prosecutor may apply to the
89 managing judge for an order directing the witness to show cause why he should not be held in
90 contempt.

91 (c) After submission of the application and a hearing at which the witness is entitled to
92 be represented by counsel, the managing judge may hold the witness in contempt and order that
93 he be confined, upon a finding that the refusal was not privileged.

94 (d) A hearing may not be held under this part unless 72 hours notice is given to the
95 witness who has refused to comply with the order to testify or provide other information,
96 except a witness may be given a shorter notice if the managing judge upon a showing of special
97 need so orders.

98 (e) Any confinement for refusal to comply with an order to testify or produce other
99 information shall continue until the witness is willing to give the testimony or provide the
100 information. A period of confinement may not exceed the term of the grand jury, including
101 extensions, before which the refusal to comply with the order occurred. In any event the
102 confinement may not exceed one year.

103 (f) A person confined under this Subsection (6) for refusal to testify or provide other
104 information concerning any transaction, set of transactions, event, or events may not be again
105 confined under this Subsection (6) or for criminal contempt for a subsequent refusal to testify
106 or provide other information concerning the same transaction, set of transactions, event, or
107 events.

108 (g) Any person confined under this section may be admitted to bail or released in
109 accordance with local procedures pending the determination of an appeal taken by him from
110 the order of his confinement unless the appeal affirmatively appears to be frivolous or taken for
111 delay. Any appeal from an order of confinement under this section shall be disposed of as soon
112 as practicable, pursuant to an expedited schedule and in no event more than 30 days from the
113 filing of the appeal.

114 (7) (a) All proceedings, except when the grand jury is deliberating or voting, shall be
115 recorded stenographically or by an electronic recording device. An unintentional failure of any
116 recording to reproduce all or any portion of a proceeding does not affect the validity of any
117 prosecution or indictment. The recording or reporter's notes or any transcript prepared from
118 them shall remain in the custody or control of the attorney for the state or the special prosecutor
119 unless otherwise ordered by the managing judge in a particular case.

120 (b) A grand juror, an interpreter, a court reporter, an operator of a recording device, a
121 typist who transcribes recorded testimony, an attorney for the state or special prosecutor, or any
122 person to whom disclosure is made under the provisions of this section may not disclose
123 matters occurring before the grand jury except as otherwise provided in this section. A
124 knowing violation of this provision may be punished as a contempt of court.

125 (c) Disclosure otherwise prohibited by this section of matters occurring before the
126 grand jury, other than its deliberations and the vote of any grand juror, may be made to:

127 (i) an attorney for the state or a special prosecutor for use in the performance of that
128 attorney's duty; and

129 (ii) government personnel, including those of state, local, and federal entities and
130 agencies, as are considered necessary by the attorney for the state or special prosecutor to assist
131 him in the performance of his duty to enforce the state's criminal laws.

132 (d) Any person to whom matters are disclosed under this section may not utilize that
133 grand jury material for any purpose other than assisting the attorney for the state or the special
134 prosecutor in performance of that attorney's duty to enforce the state's criminal laws. An
135 attorney for the state or the special prosecutor shall promptly provide the managing judge with
136 the names of the persons to whom the disclosure has been made and shall certify that the
137 attorney has advised the person of his obligation of secrecy under this section.

138 (e) Disclosure otherwise prohibited by this section of matters occurring before the
139 grand jury may also be made when:

140 (i) directed by the managing judge or by any court before which the indictment that
141 involves matters occurring before the grand jury that are subject to disclosure is to be tried,

142 preliminary to or in connection with a judicial proceeding;

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

146 (iii) the disclosure is made by an attorney for the state or the special prosecutor to
147 another state or local grand jury or a federal grand jury;

148 (iv) permitted by the managing judge at the request of an attorney for the state or the
149 special prosecutor, upon a showing that the matters may disclose a violation of federal criminal
150 law, to an appropriate official of the federal government for the purpose of enforcing federal
151 law; or

152 (v) showing of special need is made and the managing judge is satisfied that disclosure
153 of the information or matters is essential for the preparation of a defense.

154 (f) When the matters are transcripts of testimony given by witnesses, the state or
155 special prosecutor intends to call in the state's case in chief in any trial upon an indictment
156 returned by the grand jury before which the witnesses testified, the attorney for the state or the
157 special prosecutor shall, no later than 30 days before trial, provide the defendant with access to
158 the transcripts. The attorney for the state or the special prosecutor shall at the same time
159 provide the defendant with access to all exculpatory evidence presented to the grand jury prior
160 to indictment.

161 (g) When the managing judge orders disclosure of matters occurring before the grand
162 jury, disclosure shall be made in a manner, at a time, and under conditions the managing judge
163 directs.

164 (h) A petition for disclosure made under Subsection (7)(e)(ii) shall be filed with the
165 managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon
166 the attorney for the state or the special prosecutor, the parties to the judicial proceeding if
167 disclosure is sought in connection with the proceeding, and other persons as the managing
168 judge directs. The managing judge shall afford those persons a reasonable opportunity to
169 appear and be heard.

170 (8) Records, orders, and subpoenas relating to grand jury proceedings shall be kept
171 under seal to the extent and so long as necessary to prevent disclosure of matters occurring
172 before the grand jury other than as provided in this section.

173 (9) Subject to any right to an open hearing in contempt proceedings, the managing
174 judge shall order a hearing on matters affecting a grand jury proceeding to be closed to the
175 extent necessary to prevent disclosure of matters occurring before a grand jury.