

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:
 - victim of crime at least 72 hours before the victim is required to testify; and
 - witness to testify at least 48 hours before the witness 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



28 **subjects -- Evidence -- Contempt -- Notice -- Record of proceedings -- Disclosure.**

29 (1) The managing judge shall designate the place where the grand jury meets. The
30 grand jury may, upon request and with the permission of the managing judge, meet and conduct
31 business any place within the state. Subject to the approval of the managing judge the grand
32 jury shall determine the times at which it meets.

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

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

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

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

44 (i) A subpoena requiring a victim of a crime to testify before a grand jury may not be
45 served less than 72 hours before the victim is required to testify.

46 (ii) A subpoena requiring a witness to testify before a grand jury may not be served less
47 than 48 hours before the witness is required to testify.

48 (c) The managing judge may enter any order necessary to secure compliance with any
49 subpoena issued in the name of the grand jury.

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

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

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

55 (ii) that he is a subject;

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

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

58 (c) A witness who is also a target as defined in Section 77-10a-1 shall at the time he

59 appears as a witness, be advised:

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

61 (ii) that he is a target;

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

63 (iv) that the attorney for the state, the special prosecutor, or the grand jury is in
64 possession of substantial evidence linking him to the commission of a crime for which he could
65 be charged; and

66 (v) of the general nature of that charge and of the evidence that would support the
67 charge.

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

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

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

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

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

88 (b) When a witness in any proceeding before or ancillary to any grand jury appearance
89 refuses to comply with an order from the managing judge to testify or provide other

90 information, including any book, paper, document, record, recording, or other material without
91 having a recognized privilege, the attorney for the state or special prosecutor may apply to the
92 managing judge for an order directing the witness to show cause why he should not be held in
93 contempt.

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

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

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

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

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

117 (7) (a) All proceedings, except when the grand jury is deliberating or voting, shall be
118 recorded stenographically or by an electronic recording device. An unintentional failure of any
119 recording to reproduce all or any portion of a proceeding does not affect the validity of any
120 prosecution or indictment. The recording or reporter's notes or any transcript prepared from

121 them shall remain in the custody or control of the attorney for the state or the special prosecutor
122 unless otherwise ordered by the managing judge in a particular case.

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

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

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

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

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

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

143 (i) directed by the managing judge or by any court before which the indictment that
144 involves matters occurring before the grand jury that are subject to disclosure is to be tried,
145 preliminary to or in connection with a judicial proceeding;

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

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

151 (iv) permitted by the managing judge at the request of an attorney for the state or the

152 special prosecutor, upon a showing that the matters may disclose a violation of federal criminal
153 law, to an appropriate official of the federal government for the purpose of enforcing federal
154 law; or

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

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

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

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

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

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

Legislative Review Note
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Office of Legislative Research and General Counsel