

GRAND JURY AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: John L. Valentine

LONG TITLE

Committee Note:

The Judiciary, Law Enforcement, and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill provides exceptions to the requirement of 72 hours notice for a minor to testify before a grand jury.

Highlighted Provisions:

This bill:

▶ allows a subpoena to be served on a minor to testify before a grand jury less than 72 hours before testifying if there is a threat to the minor's safety or a risk of:

- concealment or removal of the minor from the jurisdiction;
- intimidation, either to the minor or a member of the minor's family; and
- undue influence on the minor regarding the minor's testimony.

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 2011, Chapter 437



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

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

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

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

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

(c) ~~[A]~~ Except as provided in Subsection (3)(d), a subpoena requiring a minor, who is a victim of a crime, to testify before a grand jury may not be served less than 72 hours before the victim is required to testify.

(d) A subpoena may be served upon a minor less than 72 hours before the minor is required to testify if the managing judge finds that the minor was intentionally concealed to prevent service or that a shorter period is reasonably necessary to prevent:

(i) a risk to the minor's safety;

(ii) the concealment or removal of the minor from the jurisdiction;

(iii) intimidation or coercion of the minor or a family member of the minor; or

(iv) undue influence on the minor regarding the minor's testimony.

(e) The service requirement in Subsection (3)(c) may be asserted only by or on behalf

59 of the minor and is not a basis for invalidation of the minor's testimony or any indictment
60 issued by the grand jury.

61 ~~(f)~~ (f) The managing judge may enter any order necessary to secure compliance with
62 any subpoena issued in the name of the grand jury.

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

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

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

68 (ii) that he is a subject;

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

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

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

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

74 (ii) that he is a target;

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

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

79 (v) of the general nature of that charge and of the evidence that would support the
80 charge.

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

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

89 (b) Any person, including a witness who has previously testified or produced books,

90 records, documents, or other evidence, may present exculpatory evidence to the attorney
91 representing the state or the special prosecutor and request that it be presented to the grand
92 jury, or request to appear personally before the grand jury to testify or present evidence to that
93 body. The attorney for the state or the special prosecutor shall forward the request to the grand
94 jury.

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

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

101 (b) When a witness in any proceeding before or ancillary to any grand jury appearance
102 refuses to comply with an order from the managing judge to testify or provide other
103 information, including any book, paper, document, record, recording, or other material without
104 having a recognized privilege, the attorney for the state or special prosecutor may apply to the
105 managing judge for an order directing the witness to show cause why he should not be held in
106 contempt.

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

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

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

119 (f) A person confined under this Subsection (6) for refusal to testify or provide other
120 information concerning any transaction, set of transactions, event, or events may not be again

121 confined under this Subsection (6) or for criminal contempt for a subsequent refusal to testify
122 or provide other information concerning the same transaction, set of transactions, event, or
123 events.

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

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

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

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

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

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

148 (d) Any person to whom matters are disclosed under this section may not utilize that
149 grand jury material for any purpose other than assisting the attorney for the state or the special
150 prosecutor in performance of that attorney's duty to enforce the state's criminal laws. An
151 attorney for the state or the special prosecutor shall promptly provide the managing judge with

152 the names of the persons to whom the disclosure has been made and shall certify that the
153 attorney has advised the person of his obligation of secrecy under this section.

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

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

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

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

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

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

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

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

180 (h) A petition for disclosure made under Subsection (7)(e)(ii) shall be filed with the
181 managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon
182 the attorney for the state or the special prosecutor, the parties to the judicial proceeding if

183 disclosure is sought in connection with the proceeding, and other persons as the managing
184 judge directs. The managing judge shall afford those persons a reasonable opportunity to
185 appear and be heard.

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

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

Legislative Review Note
as of 7-6-11 11:13 AM

Office of Legislative Research and General Counsel