

1 **GRAND JURY AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kay L. McIff**

5 Senate Sponsor: John L. Valentine

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

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

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **77-10a-13**, as last amended by Laws of Utah 2011, Chapter 437

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

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

28 **77-10a-13. Location -- Who may be present -- Witnesses -- Witnesses who are**
29 **subjects -- Evidence -- Contempt -- Notice -- Record of proceedings -- Disclosure.**

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

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

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

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

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

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

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

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

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

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

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

56 (e) The service requirement in Subsection (3)(c) may be asserted only by or on behalf
57 of the minor and is not a basis for invalidation of the minor's testimony or any indictment

58 issued by the grand jury.

59 (f) The service requirement of Subsection (3)(d) may be asserted by a parent or legal
60 guardian of the minor on the minor's behalf.

61 (g) If the managing judge finds it necessary to prevent any of the actions enumerated in
62 Subsections (3)(d)(i) through (iv) or to otherwise protect the minor, the judge may appoint a
63 guardian ad litem to receive service on behalf of the minor, to represent the minor, and to
64 protect the interests of the minor.

65 (h) If the minor served under Subsection (3)(d), has no parent, legal guardian, or
66 guardian ad litem with whom to confer prior to the grand jury hearing, the managing judge
67 shall appoint legal counsel to represent the minor at the hearing.

68 (i) For any minor served with a subpoena under this section, attorneys representing the
69 state, or special prosecutors appointed under Section 77-10a-12, shall interview and prepare the
70 minor in the presence of the minor's parent or legal guardian and their attorney, or a guardian
71 ad litem at least 24 hours prior to the time the minor is required to testify. The provisions of
72 this subsection requiring the presence of the minor's parent do not apply if:

73 (i) the parent is the subject of the grand jury investigation; or

74 (ii) the parent is engaged in, or conspires with, another to frustrate the protections and
75 purposes of Subsection (3)(d).

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

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

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

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

83 (ii) that he is a subject;

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

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

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

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

89 (ii) that he is a target;

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

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

94 (v) of the general nature of that charge and of the evidence that would support the
95 charge.

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

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

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

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

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

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

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

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

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

134 (f) A person confined under this Subsection (6) for refusal to testify or provide other
135 information concerning any transaction, set of transactions, event, or events may not be again
136 confined under this Subsection (6) or for criminal contempt for a subsequent refusal to testify
137 or provide other information concerning the same transaction, set of transactions, event, or
138 events.

139 (g) Any person confined under this section may be admitted to bail or released in
140 accordance with local procedures pending the determination of an appeal taken by him from
141 the order of his confinement unless the appeal affirmatively appears to be frivolous or taken for

142 delay. Any appeal from an order of confinement under this section shall be disposed of as soon
143 as practicable, pursuant to an expedited schedule and in no event more than 30 days from the
144 filing of the appeal.

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

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

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

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

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

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

169 (e) Disclosure otherwise prohibited by this section of matters occurring before the

170 grand jury may also be made when:

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

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

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

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

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

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

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

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

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

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

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