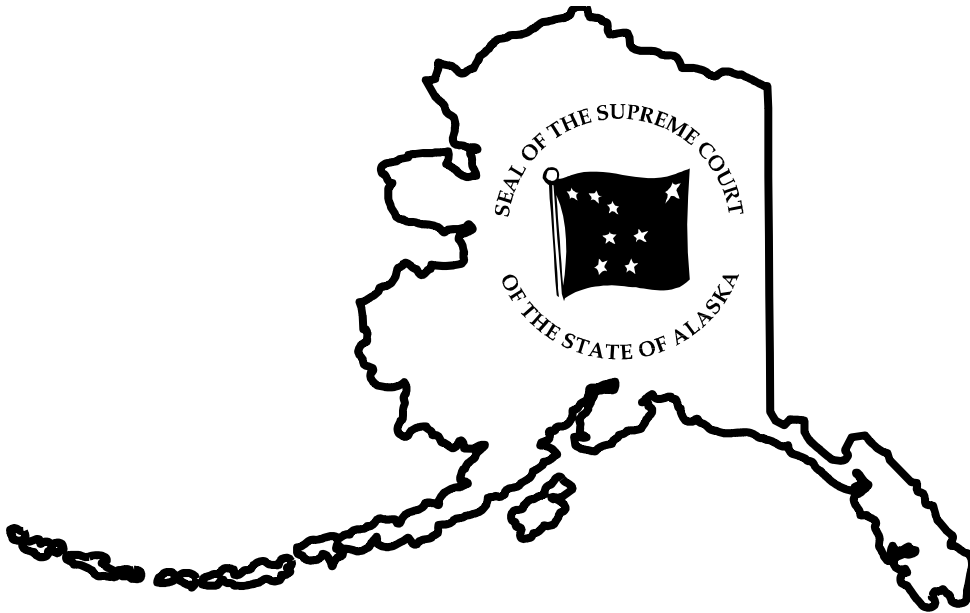


# Alaska Grand Jury Handbook



**Alaska Court System**

**July 2022**

Jury Services Website: <https://courts.alaska.gov/jury>

## **Statutes and Rules on Grand Juries**

### **Alaska Statutes:**

<b>AS 09.20.010 - .100</b>	<b>Juror Qualifications, Exemptions, Selection, etc.</b>
<b>AS 12.40.010 - .110</b>	<b>Grand Jury</b>

### **Alaska Rules of Court:**

<b>Administrative Rule 14</b>	<b>Juror Fees</b>
<b>Administrative Rule 15</b>	<b>Juror Selection, Privacy, Terms of Service, etc.</b>
<b>Evidence Rule 606(b)</b>	<b>Inquiry into Validity of Verdict or Indictment</b>
<b>Criminal Rule 6</b>	<b>The Grand Jury</b>
<b>Criminal Rule 6.1</b>	<b>Grand Jury Reports</b>
<b>Criminal Rule 7</b>	<b>Indictment and Information</b>

### **Administrative Bulletins:**

<b>Bulletin 25</b>	<b>Jury Records</b>
<b>Bulletin 66</b>	<b>Jury Fees</b>
<b>Bulletin 66.2</b>	<b>Jury Services – Clerks’ Authority to Defer and Excuse Jurors</b>

**See related provisions of the U.S. and Alaska Constitutions on the last page (inside back cover of printed booklet).**

## INTRODUCTION

Grand jury service is quite different from service on a trial jury.

Grand juries decide whether there is enough evidence to charge a person with a crime. If the grand jury decides to charge a crime, then a trial jury will decide whether the person is guilty of the crime.

A grand jury hears evidence only from the prosecutor, while trial juries hear from both the prosecutor and the defense. Grand jury proceedings are secret, while most trials in which trial juries serve are public. Grand juries have more members and typically serve longer terms than trial juries.

Serving on a grand jury allows you to take part in providing Alaska's citizens with one of the most fundamental guarantees in the Alaska Constitution: the guarantee that a person will have to face serious criminal charges only if a panel of private citizens decides there is sufficient evidence to require that person to stand trial.

You do not need special experience, training, or education to serve on a grand jury, but you do need to be fair, impartial, and willing to keep an open mind.

Thank you for providing this extremely important service to your fellow citizens.



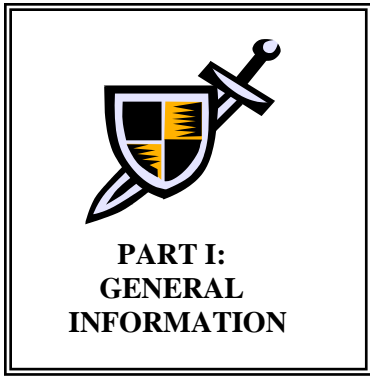
### **If you cannot hear...**

If you cannot hear the proceedings, raise your hand to get the prosecutor's or clerk's attention and explain the problem. It is very important that you hear everything said in the grand jury room.



## Sword and Shield

The grand jury acts as both a “sword” and a “shield” of justice. It acts as a sword when it investigates crimes and charges defendants with crimes. It acts as a shield by protecting accused persons from being charged when there is not enough evidence of a crime.



### **How was I chosen for jury service?**

Potential jurors are selected randomly by a computer from the list of all adults (18 years of age and older) who apply for the Alaska Permanent Fund Dividend. Ordinarily, prospective grand jurors are selected from the population that lives within 50 miles of the place where the grand jury meets.



### **Do I have to respond to the summons?**

Yes. The summons to jury service is an official court summons. If you do not respond, you could be ordered to appear before a judge, held in contempt of court, ordered to pay a fine, and have your jury service rescheduled.



### **What is the purpose of the Jury Questionnaire?**

The information you provide on the questionnaire helps the court determine whether you qualify to serve as a juror. The Alaska Statutes require jurors to be

- (1) citizens of the United States;
- (2) residents of Alaska;
- (3) at least 18 years of age;
- (4) of sound mind;
- (5) in possession of their natural faculties (normal abilities to reason);  
and
- (6) able to read or speak the English language.

In addition, a person is disqualified from serving as a juror if the person has been convicted of a felony and has not been unconditionally discharged for that offense (meaning the person is still in jail, on electronic monitoring, or on parole or probation for the offense).

The questionnaire also gives you an opportunity to request that your jury duty be postponed as explained later in this booklet.



### **If I have difficulty hearing or seeing or have another disability, will I be disqualified from jury service?**

No. A person is not disqualified from serving as a juror solely because of the loss of hearing or sight in any degree or a disability that substantially impairs or interferes with the person's mobility. The court is required to provide an interpreter or reader when necessary to enable a person with impaired hearing or sight to act as a juror. The court is also required to make its facilities accessible to persons with disabilities. If you need any assistance because of a disability, you should immediately notify the jury clerk.

If jury service would be a significant hardship because of your disability, you can ask to be temporarily or permanently excused as explained in the paragraphs below.



### **Can I postpone my jury service?**

If jury service at the time for which you are summoned will cause hardship, you may request deferral of service to another time within the next ten months. If you need a deferral, ask for one as soon as possible. Do not wait until the time you are scheduled to appear. To reschedule your jury service, select a new term of service when asked if you wish to reschedule your service on the Jury Questionnaire. If you have already sent in your questionnaire, call the jury clerk as soon as possible for instructions.



### **Can I be temporarily excused from jury service?**

The Alaska Statutes and court rules allow the following persons to be temporarily excused from jury service:

- (1) judicial officers;
- (2) persons who can show that their health, the health or proper care of their family, a physical or mental disability, or other hardship makes it necessary for them to be excused; and
- (3) teachers in a school that is designated as a low performing school under regulations adopted by the state Board of Education and Early Development. “Teacher” means a person who serves a school district in a teaching capacity in a classroom setting and is required to be certificated in order to hold the position. These teachers are only excused from jury service during the school term.

To request a temporary excusal, you must write your request and reason on the Jury Questionnaire, in the Comments section. If you have already sent in your questionnaire, call the jury clerk as soon as possible.

If your request is granted, you will be excused from service for the current jury year (except the teachers described above, who are only excused during the school term). However, you may be summoned for another term of service in the future. To be permanently excused, see the next question.



### **Can I be permanently excused from jury service?**

The court rules provide that you may be permanently excused from all jury service if you:

- (1) are 70 years of age or older and request in writing to be permanently excused; or
- (2) have a permanent medical reason you are unable to serve and provide written verification as described below.

To request a permanent excusal if you are 70 years of age or older, answer “yes” to the permanent excuse question on the Jury Questionnaire.

To request a permanent excusal if you have a permanent physical or mental disability, you must:

- (a) answer “yes” to the question “I have a mental or physical reason that prevents me from serving”;
- (b) explain in the comments section of the questionnaire that you are requesting a permanent excusal; and
- (c) provide in writing, on business stationery or a prescription pad from a medical professional (licensed physician, psychologist, nurse practitioner, physician's assistant, or chiropractor), that you are permanently unable to serve as a juror for medical reasons.

If you are permanently excused, you should not receive any further jury summonses.



### **What about my job?**

Your employer cannot fire, demote, or otherwise penalize you for missing work while performing jury service. Some employers will continue to pay your salary while you are in jury service even though they are not required to do so. Contact your employer to find out what the policy is at your job.



### **What if my employer wants proof of my jury service?**

Ask the jury clerk for a Certificate of Jury Attendance either at the end of each day of service or at the completion of your service. The certificate will indicate the dates and times you served.





### **Will I be paid for jury service?**

You will be paid \$50 per day, starting with the second day you report to the courthouse during your period of jury service. There is no payment for the first day you are summoned to the courthouse.

Exception: State employees are not paid for jury service (unless they serve on days they are not scheduled to work for the state).

You will also be reimbursed for mileage (at the rate paid to state employees) if you live more than 30 miles from the court. If you must fly or use the Marine Highway System, the court will make those arrangements for you.



### **When will I get paid?**

Jury pay is processed twice each month. The first pay period is the 1<sup>st</sup> to the 15<sup>th</sup> and the second is the 16<sup>th</sup> through the end of each month. You can expect to receive your check about 15 days after the end of the pay period in which you served. If you serve during two pay periods, you will receive two checks. If you have not received your check within 15 days after the end of your pay period, please contact the jury clerk.



### **If my check is lost, can it be reissued?**

If the check is less than six months old, contact the Administrative Jury Office in Anchorage at (907) 264-8268. The clerk will be able to re-issue the check for you.

If the check is more than six months old, the court system cannot re-issue it, and if you find it, you will not be able to cash it. After six months, the funds are automatically transferred to the State's Unclaimed Property Division. To request payment, call (907) 465-3726 or e-mail [ucproperty@alaska.gov](mailto:ucproperty@alaska.gov). Website: <https://unclaimedproperty.alaska.gov>.

**Does the court pay for meals for grand jurors?**

No.

Exception: Some courts must fly in some of their grand jurors from out of town. Under some circumstances, those out-of-town grand jurors are reimbursed for meals. You may bring snacks and non-alcoholic drinks.

**Does the court provide parking?**

Free parking is available at most courts. If parking is an issue, there will be instructions about it on your jury service reminder notice and on the Jury Services website:



### **What hours will I serve?**

The times of day that the grand jury meets are different at each court location. You can ask the jury clerk what hours the grand jury at your location typically meets.

You should report to the court at the date and time shown on your jury summons or as instructed when you call in. At that time, you will be told the procedure for reporting to the court for the rest of your term.



### **Can I bring things to do in case I have to wait for the proceedings to start?**

Yes. You may have to wait a while before the grand jury selection process begins. Bring a book or other quiet activity, solve a crossword puzzle, write a letter, sketch a picture, or get to know your fellow jurors. Of course, once the proceedings begin, you should not talk, read, or do other activities. You need to devote your full attention to what is happening in the grand jury room.



### **Can I bring my cell phone or other electronic device (laptop computer, tablet, etc.) to court when I serve on a grand jury?**

Yes. However, you must turn off all such devices whenever the grand jury is in session. You must not send or receive messages about the cases before you. You must not do any independent research. You must not look up information about the case or the people involved in the case on the internet. You must avoid news reports that might mention criminal activity that may be presented to the grand jury.

Remember, jurors must decide the case before them based solely on the evidence presented in the grand jury room.

At some courts, you will not be allowed to take these types of electronic devices into the grand jury room. Court personnel will collect them and hold them for you when each grand jury session begins.



### **Are there things I should not bring to court?**

For security reasons, weapons of any kind are not permitted in courthouses. Some examples of things you should **not** bring to court are: firearms or anything resembling a firearm; knives of any size or other sharp objects; chemical agents such as mace, bear spray, and other forms of pepper spray; ammunition; or explosives. For a complete listing of prohibited items, see the Alaska Court System Prohibited Items List at <https://courts.alaska.gov/adbulls/docs/ab85.pdf>.

Additionally, childcare is not available at the court. Please do not bring children with you when you appear for jury service.

*Grand Jurors play an essential role in the criminal justice process. Although many people do not know what to expect from jury service, most look back upon it as a rewarding experience. Jury service is a tangible, challenging, and indispensable contribution to our country.*



### **What happens on the first day?**

The first day you appear at the court for grand jury selection, the following usually happens:

1. The jury clerk takes attendance or asks you to sign in.
2. The clerk administers the “qualifying” oath – this is when you swear or affirm that you will truthfully answer questions about your qualifications to serve as a juror.
3. The judge or the clerk asks all jurors (as a group) the qualifying questions (whether you are a citizen of the United States, resident of Alaska, at least age 18, of sound mind, in possession of your natural faculties, able to read or speak English, on parole or probation for a felony).
4. The judge asks if anyone needs to be excused from service on this grand jury (for health reasons, hardship, or other reasons). Anyone who asks for an excusal will need to explain to the judge the reason for the request. The judge will decide whether to grant these requests.
5. Eighteen (18) or more persons will be randomly picked to serve on each grand jury panel. Some or all of the remaining jurors in the courtroom will be designated as alternate jurors.
6. The clerk or judge administers the grand juror oath to the grand jurors and all alternates. In this oath, the jurors will swear (or affirm) that they will
  - diligently inquire into the cases presented to them and any other matters they choose to investigate;
  - keep all grand jury proceedings secret; and
  - be impartial and not be influenced by envy, hatred, malice, fear, affection, gain, reward or hope thereof.

7. The judge reads instructions to the grand jurors and alternates.
8. The judge appoints one juror to be the “foreperson” and one to be the “deputy foreperson.” Depending on the court location, there may be other roles, or more than one person in each role. Note: These appointments may be done later.
9. The District Attorney (the prosecutor who represents the State of Alaska) or an Assistant District Attorney explains how the grand jury will work. Note: In some courts, the District Attorney’s explanation will be done later.



### **Can a grand jury have less than 18 members?**

Yes. Alaska’s Constitution requires that there be at least 12 citizens on the grand jury. The Alaska Statutes and the Alaska Rules of Court state that there must be a minimum of 12 and not more than 18 persons on the grand jury.



### **What if I need to be excused for just one or two days of my term of service?**

The court will usually allow you to be absent for a few days, but you must contact the jury clerk about this as far in advance as possible.

The court rules allow a juror to be temporarily excused because of illness or a personal or business matter that requires the juror's attention.



### **Why are alternate jurors needed?**

Alternate jurors are needed if a regular grand juror has an emergency or is excused for a particular day. An alternate juror may also be needed for just one case if a regular juror is disqualified from that case.

Note: An alternate juror must be present during the presentation of all evidence related to a particular case in order to vote on that case.



### **What is the secrecy requirement?**

You must not discuss grand jury matters with your family, friends, or others. If you are asked to discuss grand jury matters by persons outside the grand jury room, you may simply say that the law does not allow you to do so.



### **Why must I keep grand jury proceedings secret?**

The following are some reasons for grand jury secrecy:<sup>1</sup>

- (1) To prevent the escape of a person who might be charged by the grand jury.
- (2) To ensure that grand jurors can deliberate without fear that what they say will be repeated outside the jury room, and to prevent persons who might be charged by the grand jury or their friends from trying to influence or harass the grand jurors.
- (3) To prevent people from tampering with witnesses expected to testify before the grand jury and who may later testify at trial.
- (4) To encourage persons who have information about crimes to give that information to the grand jury.
- (5) To protect a person who is **not** charged by the grand jury from disclosure to the public that the person was investigated for a crime.

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<sup>1</sup> See, for example, the discussion in *Burkholder v. State*, 491 P.2d 754 (Alaska 1971), citing the federal Third Circuit Court of Appeals opinion in *United States v. Rose*, 215 F.2d 617, 628-629 (3d Cir. 1954).



## What are the foreperson's and deputy foreperson's duties?

The duties of the grand jury foreperson are to:

- administer oaths to witnesses before the witnesses testify (or affirmations to witnesses who prefer not to swear an oath);
- decide when the grand jury should take breaks during the presentation of evidence and during deliberations;
- preside over the deliberations, seeing that everyone has an opportunity to participate and that the discussions remain orderly;
- keep a record of the number of jurors concurring in the finding of every indictment and the issuance of every report, and file the record of the votes with the court clerk;
- sign all indictments and grand jury reports; and
- present the indictments to the presiding judge in open court.

The deputy foreperson will perform these duties if the foreperson is absent.



## What is the purpose of the Grand Jury?

The Alaska Statutes<sup>2</sup> describe the grand jury's two duties:

- (1) The first is to “inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court.”
- (2) Second, the grand jury has “the power to investigate and make recommendations concerning the public welfare or safety.”

The first of these duties is discussed in Section III, beginning on the next page. The second is described in Section IV.

***“Protection of the innocent against oppression and unjust prosecution” ranks among the grand jury’s vital functions.***

***State v. Gieffels, 554 P.2d 460, 464 (Alaska 1976)***

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<sup>2</sup> AS 12.40.030.





### **What is an “indictment”?**

An indictment (pronounced “*in-DITE-ment*”) is the document the grand jury uses to charge a defendant with a felony crime. It is prepared for the grand jury by the District Attorney. It is signed by the foreperson on behalf of the grand jury.



### **What is a “true bill”?**

If the grand jury votes **in favor** of charging the defendant with the crime described in the indictment, “true bill” is written on the first page of the proposed indictment.

If the grand jury votes **against** charging the defendant with the crime described in the indictment, “not a true bill” is written on the first page of the proposed indictment.



### **How many jurors have to vote in favor of the charges in order for the grand jury to return a “true bill”?**

A “true bill” can be returned only if a majority of the total number of jurors comprising the grand jury when the grand jury was sworn and charged with instructions votes in favor.

Usually, the original number of jurors when the grand jury is sworn is 18. If that is true, then the number that will need to vote in favor of the charges is 10.

Note: It is **not** the number of jurors present at the time the case is heard that matters. It is the number that was on the original grand jury when the grand jury was sworn and given its instructions by the presiding judge. For example, if there were 18 jurors when the grand jury was originally sworn, but only 16 members present to hear the current case, it is still 10 jurors who must agree in order to return a “true bill” on the indictment.



### **What kinds of cases does a grand jury hear?**

There are two basic kinds of criminal offenses: felonies and misdemeanors. A **felony** is a crime where the defendant has the possibility of getting a sentence of more than one year in jail. A **misdemeanor** is a crime where the maximum sentence is one year or less of jail time.

The grand jury will inquire into “all crimes” committed within the court’s jurisdiction. However, in practice, the only crimes the prosecutor will usually bring to the grand jury are felonies. This is because misdemeanors do not require a grand jury indictment. The prosecutor can choose to charge these lesser crimes by filing a document called an “information” with the court. Sometimes though, the prosecutor may choose to present misdemeanors along with felonies to the grand jury, usually if they are related or involve the same defendant.



### **How are cases presented to the grand jury?**

The prosecutor presents cases to the grand jury. The prosecutor will identify who the State wants to charge with a crime, describe what the person allegedly did that is a crime, and explain the statutes the prosecutor believes that the person violated. The prosecutor will then present evidence to try to persuade the grand jurors that the accused person has committed the crime. The evidence can be testimony from witnesses under oath, documents (paper or electronic), audio or video recordings, photographs, the results of scientific tests, etc.

Sometimes, the case will involve only one defendant and one crime. Other times, there may be multiple defendants and/or multiple crimes. If there are multiple crimes in one case, each crime will be referred to by a different number, called a “count.”

The prosecutor will prepare a proposed indictment and act as the grand jury's legal advisor, explaining the applicable law and answering the grand jurors' questions about the law and procedure.<sup>3</sup>

All proceedings before the grand jury—including the testimony of witnesses, any statements made by the prosecuting attorney, and any statements by or questions of the jurors—must be electronically recorded.

It is very important for grand jurors to understand that they are **not** on the side of the prosecution. Because the prosecutor acts as your advisor, you may develop a close relationship. However, you must not merely rubber-stamp the prosecutor's recommendations. You must use your own independent judgment to decide whether to vote in favor of the indictment.



### **What does the grand jury decide?**

The grand jurors must decide whether all of the evidence taken together, if unexplained or uncontradicted, would justify a conviction of the defendant.

Since the grand jurors only hear the prosecutor's side of the case and not the defendant's, the grand jury is not making the final decision about whether the defendant is guilty or not guilty. This question is for the trial jury to decide. The grand jury is just deciding whether the evidence the prosecutor has presented is enough to support a conviction at trial if the defense cannot explain or contradict that evidence.

The grand jury proceeding is not intended to be a mini trial, so the prosecutor does not need to present all of the evidence necessary to prove guilt beyond a reasonable doubt. The prosecutor merely has to introduce enough evidence to show a probability of guilt.<sup>4</sup>

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<sup>3</sup> Criminal Rule 6(i); AS 12.40.070; *Cameron v. State*, 171 P.3d 1154, 1156 - 1157 (Alaska 2007).

<sup>4</sup> *Sheldon v. State*, 796 P.2d 831, 836-837 (Alaska App. 1990).

The grand jury's power is only to accuse, not to convict. It will be up to the trial jury, who will hear evidence from both sides, to decide whether the defendant is guilty beyond a reasonable doubt.

Note: Each crime has a number of "elements." They are listed in the statute that defines the crime. These elements are like ingredients in a recipe, and all must be present for the crime to be charged. They generally include one or more specific acts (or a failure to act) combined with a particular state of mind at the time the act or failure to act occurred. The prosecutor will identify and explain each element to the grand jury, and the jury must find proof of each element before it can find that a crime was committed.



**If a grand juror knows some information about the defendant or the case, can that juror tell the other jurors about it?**

Not unless the juror takes the witness stand and testifies about the information. The court rules state: "An indictment shall not be found nor a presentment made upon the statement of a grand juror unless such grand juror is sworn and examined as a witness."<sup>5</sup>

If you know something about a case, you need to tell the prosecutor so it can be determined if you should be disqualified (usually only for that case). You must not tell the other jurors about any information you have from outside the courthouse about the case.



**Can a grand juror ask the grand jury to investigate a crime that the prosecutor has not presented to them?**

Yes. The Alaska Statutes state: "If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it."<sup>6</sup>

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<sup>5</sup> Criminal Rule 6(q).

<sup>6</sup> AS 12.40.040.

After investigation, the grand jury may not be sure whether the facts constitute a crime or whether the defendant can still be prosecuted for it (for example, because so much time has passed, or because the defendant was previously on trial for the offense). If at least five members of the grand jury agree, the grand jury can ask the court for instructions on the law. To do this, the grand jury must describe the facts in writing (without mentioning the name of any person) and give that document to the court. This document is called a “presentment.” If the grand jury requests it, the prosecuting attorney must assist in the investigation and preparation of the presentment. The court will give whatever instructions on the law the court considers necessary. The court will not keep the presentment. If the facts constitute a crime and the defendant can be prosecuted for it, the grand jury can require the prosecutor to prepare an indictment and the grand jury can vote on whether it is a “true bill.”



**If a grand juror is concerned about being fair and impartial in deciding a particular case, what should that grand juror do?**

A grand juror who, after hearing about a particular case, is concerned about being fair or impartial should tell the prosecutor. The prosecutor can excuse the juror from that case and ask the presiding judge to impanel an alternate juror.

Note: Grand jurors will be told the name of the accused and the names of the witnesses who will testify, as well as the nature of the case, before the prosecutor presents each case. The prosecutor may then ask whether you know or are related to the defendant or witnesses, have any financial or other interest in the outcome of the case, have formed or expressed a previous opinion about the case, or have any personal bias or prejudice that might affect how you will decide the case.



### **Can the prosecutor ask the judge to excuse a seated grand juror?**

Yes. If the prosecutor becomes aware of a grand juror's potential prejudice or bias that could affect the grand jury's impartial deliberations, the prosecutor must present that information to the presiding judge. The judge will then notify the juror about this and question the juror concerning the potential bias. After hearing from the juror, the judge may request additional information from the prosecutor, other jurors, or other sources. If the judge believes there is potential bias, the judge may excuse the juror permanently, or just for a particular case. If the judge does not believe there is potential bias, the judge will allow the juror to remain.

The prosecutor can also challenge a seated grand juror "for cause." For example, a grand juror who personally knows the defendant or the investigating officer or the victim would most likely be excused "for cause" from hearing that case.



### **Can grand jurors take notes?**

Yes. However, you are not allowed to remove your notes from the grand jury room. Any notes you take will be destroyed when they are no longer needed.



### **What if I cannot hear the proceedings?**

Raise your hand to get the prosecutor's attention and then explain the problem. It is very important that you hear everything said in the grand jury room.



### **Who will be in the room when the prosecutor presents a case?**

In addition to the prosecutor and the grand jurors, only the following people can be present:

- the witness being questioned
- a law enforcement officer who has custody of a witness (for example, if the witness is currently serving time in jail)
- interpreters (if needed)
- a deputy court clerk to record what is said

The following people will **not** be present: the judge, the defendant, the defendant's lawyer, the victim (unless testifying as a witness), the media, or other members of the general public.



### **How many grand jurors must be present?**

At least 12 members must be present at each session in order to proceed with any grand jury business.



### **Can grand jurors ask witnesses questions?**

Yes. Witnesses should be treated politely and questions asked of them in an orderly fashion. If you have any doubt about whether it is appropriate to ask a particular question, ask the prosecutor for advice.

Note: All witnesses have the right to refuse to answer any question if the answer would tend to incriminate them.



**Can grand jurors ask the prosecutor to bring in additional witnesses, documents, or other evidence?**

Yes.

Note: a “subpoena” (pronounced “*suh-PEEN-uh*”) is a court order that requires a person to appear and testify in court. It can also require the person to bring documents to court. The prosecutor can get a subpoena at the grand jury’s request.



**Will the grand jury hear evidence in favor of the defendant?**

The grand jury has no duty to hear evidence on behalf of the defendant, but it may do so if it wants to.

Note: When the grand jury has reason to believe that other available evidence will explain away the charge, it must order that evidence to be produced. For that purpose, the grand jury should require the prosecutor to subpoena witnesses or bring in other documents or evidence.



**Do defendants always know that the grand jury is considering charges against them?**

No.



**Can the defendant be present?**

The defendant is usually not present. The defendant may only be present in the grand jury room if called to testify as a witness by the prosecutor or the grand jury.<sup>7</sup>

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<sup>7</sup> Criminal Rule 6(k); *Frink v. State*, 597 P.2d 154, 165 fn. 18 (Alaska 1979).



Note: The defendant in a criminal case is **never** required to testify. The defendant has a constitutional right not to testify under both the Alaska and the United States Constitutions. The grand jury cannot hold it against the defendant in any way if the grand jury asks the defendant to testify and the defendant declines.



### **Can the grand jury call the defendant to testify?**

Yes. However, the defendant should not be ordered (subpoenaed) to testify if the prosecutor has been notified in advance that the defendant will exercise the defendant's constitutional right not to testify.<sup>8</sup>



### **Can the defendant call witnesses or present evidence to the grand jury?**

No.



### **Can the defendant ask to testify before the grand jury?**

Yes. The prosecutor must inform the grand jury whenever the defendant clearly and unconditionally tells the prosecutor of a desire to testify before the grand jury. Once the prosecutor tells the grand jury about the defendant's desire to testify—and reminds the grand jury of its ability to call the defendant as a witness—the grand jury decides whether or not to allow this testimony.

***“No person shall be ... compelled in any criminal case to be a witness against himself.”***

***Fifth Amendment to the Constitution of the United States and  
Article I Section 9 of the Alaska Constitution***

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<sup>8</sup> *Coleman v. State*, 553 P.2d 40, 51 (Alaska 1976).



### **Does the prosecutor have to present evidence favorable to the defendant?**

The prosecutor has a duty to present “exculpatory evidence” to the grand jury. Exculpatory evidence is evidence that shows or tends to show that the defendant is not guilty. It is the opposite of “inculpatory evidence,” which tends to prove guilt.

The prosecutor must present exculpatory evidence so that the grand jury can properly perform its function of protecting the innocent from unjust prosecution. But the prosecutor's obligation to present exculpatory evidence does not turn the prosecutor into a defense attorney. The prosecutor does **not** have to develop or argue evidence on behalf of the defendant or investigate every lead possibly favorable to the defendant.<sup>9</sup>

The prosecutor only has to present evidence known to the prosecutor which, in and of itself, tends to show the defendant is not guilty.<sup>10</sup>



### **Who can be in the room when the grand jury deliberates?**

“Deliberations” are when the grand jurors discuss the case among themselves and decide whether to vote in favor of the indictment. After the prosecutor finishes presenting the evidence in the case, everyone else will leave the grand jury room, so that the grand jury can deliberate.

No one except the grand jurors (and any interpreter necessary to assist a juror who is hearing- or speech-impaired) can be present while the grand jury is deliberating or voting. Neither the prosecutor nor the court clerk can be present. The deliberations are **not** audio-recorded. If you take notes during deliberations, those notes may not leave the grand jury room and will be destroyed after deliberations are over.

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<sup>9</sup> *Frink v. State*, 597 P.2d 154, 166 (Alaska 1979).

<sup>10</sup> *Wilkie v. State*, 715 P.2d 1199, 1201 (Alaska App. 1986).



### **How should we conduct our deliberations?**

Each grand juror may have a different opinion at the start of deliberations. You should keep an open mind. Listen carefully to other jurors' opinions and the reasons for their opinions. You should be prepared to tell the other jurors what you think and why you think it. Be fair and carefully consider what your fellow jurors are saying. Do not let yourself be intimidated into changing your opinion, and do not intimidate anyone else. Change your opinion only if you genuinely agree with what another juror is saying.



### **What if we decide we need more evidence after we have begun deliberations?**

If you want to hear more testimony or see more documents or other evidence, ask your foreperson to direct the prosecutor to subpoena the additional witnesses or documents.



### **How does the grand jury send its decision to the judge?**

If the grand jury votes in favor of the indictment, the foreperson will write the words "true bill" on the indictment (if those words are not already pre-printed on the indictment) and sign it. At the end of the day, the foreperson and the prosecutor will present the indictments to a judge in open court. If the indictment needs to be kept secret for any reason, this hearing will not be public.

If the grand jury votes against the indictment, the foreperson will write the words "not a true bill" on the indictment and sign it.



**What if I accidentally hear something about the case outside the grand jury room, or if someone contacts me about the case, or if I realize during the presentation of evidence that I have some special information that relates to the case?**

You should tell the prosecutor. If other grand jurors are present, signal to the prosecutor that you need to say something privately. Do not talk about any case-specific information while any other grand juror is still present. Once the other jurors are no longer present, the prosecutor will have you state the information on the record and decide if you should be disqualified. If you realize you have information about the case when a witness is testifying, you should raise your hand and ask the prosecutor for a short break so you can explain the situation.



*“The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.”*  
*Alaska Constitution, Article 1, Section 8*



### **What can the grand jury investigate?**

Grand juries have “the power to investigate and make recommendations concerning the public welfare or safety.” The public welfare or safety is quite a broad category of topics. Some examples of matters grand juries have previously investigated are:<sup>11</sup>

- At the request of Alaska's Attorney General, an Anchorage grand jury investigated the conduct of the Anchorage School District, the Anchorage Police Department, and the Anchorage District Attorney's Office relating to their investigation of a high school teacher's sexual relationships with students. The grand jury's 1990 report identified deficiencies in certain statutes and policies regarding the reporting and investigation of sexual misconduct with school children. The report contained recommendations for statutory and policy changes.
- In 1985, a Juneau grand jury investigated the circumstances surrounding the state's lease of 32,000 square feet of office space in Fairbanks. Its report alleged that the governor had helped steer the state's lease to a political supporter and questioned the “candor” of his testimony before the grand jury. Instead of indicting the governor, the grand jury's report recommended that the Senate be called into special session to consider impeachment proceedings.

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<sup>11</sup> Alaska Judicial Council Report on The Investigative Grand Jury in Alaska, February 1986, at pages 33-35.

- At various times, grand juries have investigated patterns of crime. For example, a Fairbanks grand jury investigated the problem of drugs in Fairbanks high schools after several instances of drug-related juvenile crime. And in 1973, a grand jury, after recognizing the number of crimes being committed on campus, investigated security at the University of Alaska in Fairbanks. In 1986, a Bethel grand jury issued a report following an investigation into sexual abuse in that community, having noted the large number of sexual abuse cases being brought before them.
- Alleged misconduct in state and local government. In 1953, a Ketchikan grand jury conducted an investigation into alleged corruption in the Ketchikan police department. A Kenai grand jury in 1973-1974 considered allegations of improper conduct by municipal officials, including allegedly inappropriate conduct of a judge. A 1974 Fairbanks grand jury investigated alleged conflicts of interest by public officials in appropriating funds for the Fairbanks flood control project. In 1981 and 1982, separate grand juries in Juneau investigated allegations of misconduct by two state senators. In 1984, an Anchorage grand jury investigated potential criminal practices related to property and inventory maintained by the Alaska Division of Fish and Wildlife Protection's Aircraft Section.
- Potential criminal activity affecting public welfare or safety. Anchorage grand juries have investigated such matters as waste of game animals (1964), alleged irregularities in a local election (1965), the use of listening devices (1966), drug abuse by minors (1967), and public exhibition of adult motion pictures (1969).
- Criminal justice system. Grand juries have investigated the effectiveness of police operations in Bethel in 1977 and 1983; and the operation of the jail in Utqiagvik (formerly Barrow) in 1983, following an escape. In Fairbanks and in Anchorage, grand juries routinely investigated the condition of the jails and related institutions virtually every year until the early 1970s.
- Non-criminal investigations of conditions affecting public welfare or safety. In 1962 and 1964, Anchorage grand juries investigated traffic safety and road signs; in 1964, city zoning; and in 1965, water and sewer service.

***“The grand jury is entitled to access, at all reasonable times, to the public jails and prisons, to offices pertaining to the courts of justice in the state, and to all other public offices, and to the examination of all public records in the state.”***

***– Alaska Statute 12.40.060***



### **Who decides that the grand jury should investigate something?**

Generally, grand jury investigations are initiated by the District Attorney. They can also be initiated by the presiding judge or by members of the grand jury. Prosecutors also sometimes receive letters from the public, addressed to the grand jury, requesting investigations. In these situations, the prosecutor will probably conduct a preliminary investigation and make a recommendation to the grand jury about whether to take action. It will be up to the grand jury to decide whether to investigate the matter requested in the letter.



### **What happens at the end of the investigation?**

The grand jury can write a report in which it makes recommendations about the matter it investigated. The grand jury then submits the report to the presiding judge of the judicial district.

The report's recommendations must be based upon the results of the investigation. They must not be based on speculation.<sup>12</sup>



### **How many grand jurors must agree about the contents of a report before the grand jury can present the report to the court?**

A report may be made only if there is agreement by a majority of the grand jurors who were on the grand jury at the beginning of the proceedings that result in the report.

***The purpose of grand jury reports is to inform the public of situations requiring administrative, judicial, or legislative corrective action – not the castigation of individuals.***

***- American Bar Association Model Grand Jury Act***

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<sup>12</sup> *O'Leary v. Superior Court*, 816 P.2d 163, 170 (Alaska 1991).



## **Can a grand jury report include allegations of criminal conduct?**

Yes.



## **What happens after the report is presented to the court?<sup>13</sup>**

The presiding judge must review the report and the grand jury's evidence before the report can be made public. The judge must first confirm that the report concerns the public safety or welfare, that a majority of the grand jurors voted in favor of it, and that it was signed by the foreperson.

The judge must then determine if publication of the report would "improperly infringe upon a constitutional right of any person," including improperly interfering with the person's right to privacy or right to a fair trial in a pending or planned criminal proceeding.

Next, the judge must determine whether any part of the report "may reflect adversely on any person who is named or otherwise identified in the report." If it does, the judge must give notice of the report to that person. The person can ask the judge for a hearing and submit a written response to the grand jury's report and ask the judge to attach that response to the report when the report is published. At the hearing, the judge will decide whether the part of the report that may adversely reflect upon the named (or otherwise identified) person is supported by "substantial evidence." If not, the judge will return the report to the grand jury with an explanation of why the report has not been made public.

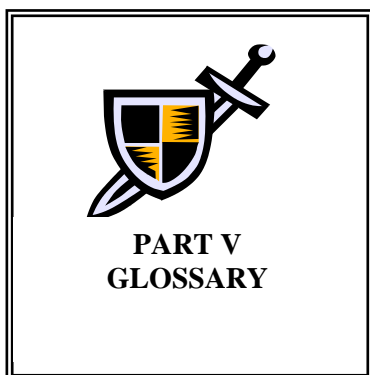
The grand jury can then decide whether to conduct further proceedings, revise the report, or appeal the judge's decision to a higher court.

If the judge finds no problems with the report, the judge will order that the report be made public. The judge will also direct that copies of the report be sent to other persons "as reasonably requested by the grand jury."

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<sup>13</sup> *O'Leary v. Superior Court*, 816 P.2d 163, 169-170 (Alaska 1991).





The list below defines some terms used in this booklet, as well as some terms you might hear at the court.

**capital crime** — A crime that is punishable by death. In Alaska, there are no **state** offenses that have a death penalty.

**charge** — (1) A formal accusation that someone has committed a crime, or (2) the reading of the jury instructions to the jury by the judge.

**evidence** — Any form of proof presented to the grand jury. There are two main types of evidence: exhibits and testimony of witnesses. The grand jury decides what the exhibits and testimony prove or don't prove, and the level of importance to attach to a piece of evidence.

**exculpatory** — “Exculpatory” evidence is evidence that shows or tends to show that the defendant is not guilty. It is the opposite of “inculpatory” evidence, which tends to prove guilt.

**exhibit** — A paper, document, photograph, video, or other physical object presented to the grand jury as evidence.

**felony** — A crime where the defendant has the possibility of being sentenced to jail for more than one year.

**grand jury** — A jury of 12 to 18 persons selected to inquire into alleged crimes in order to decide whether the evidence is sufficient to justify a trial. Only the prosecutor presents evidence to the grand jury.

**indictment** — The name of the document the grand jury uses to charge a person with a crime. It is prepared for the grand jury by the District Attorney (the prosecutor). It is signed by the foreperson on behalf of the grand jury.

**information** — the name of the document prosecutors use to charge a person with a crime. An information can always be used to charge a person with a misdemeanor, but it cannot be used to charge a person with a felony unless the person waives (gives up) the right to have a grand jury decide whether the case has merit.

**lawyer** — A person licensed to practice law. Other words for lawyer are "attorney" or "counsel." In criminal cases, the government's lawyer is often called the "prosecutor."

**misdemeanor** — A crime where the maximum sentence the defendant can receive is one year or less in jail.

**prosecutor** — The lawyer who represents the government (and the interests of the general public) in a criminal case. The prosecutor brings charges against people accused of crimes and attempts to prove those charges in court. If the alleged crime is a violation of **state** law, the prosecutor will be the District Attorney or an Assistant District Attorney.

**subpoena** — A court order that requires a person to appear and testify in court. It can also require the person to bring documents to court.

**testimony** — Any statement made by a witness under oath in court.

**trial jury** — In criminal cases, the trial jury decides whether persons charged with crimes are guilty or not guilty. At trial, both the prosecutor and the defense can present evidence. A judge presides over the trial and gives instructions to jurors about the law. The judge also determines what evidence can be presented to the jury if there are disputes about whether it is legal to admit a particular piece of evidence.

**true bill** — The words written on the prosecutor's proposed indictment if the grand jury votes in favor of charging the defendant with the crime described in the indictment. If the grand jury votes against charging the defendant with this crime, the words "not a true bill" must be written on the proposed indictment.

## **United States Constitution**

### **Amendment 5 – Trial and Punishment, Compensation for Takings.**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## **Alaska Constitution**

### **Article I, Section 8 - Grand Jury.**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.