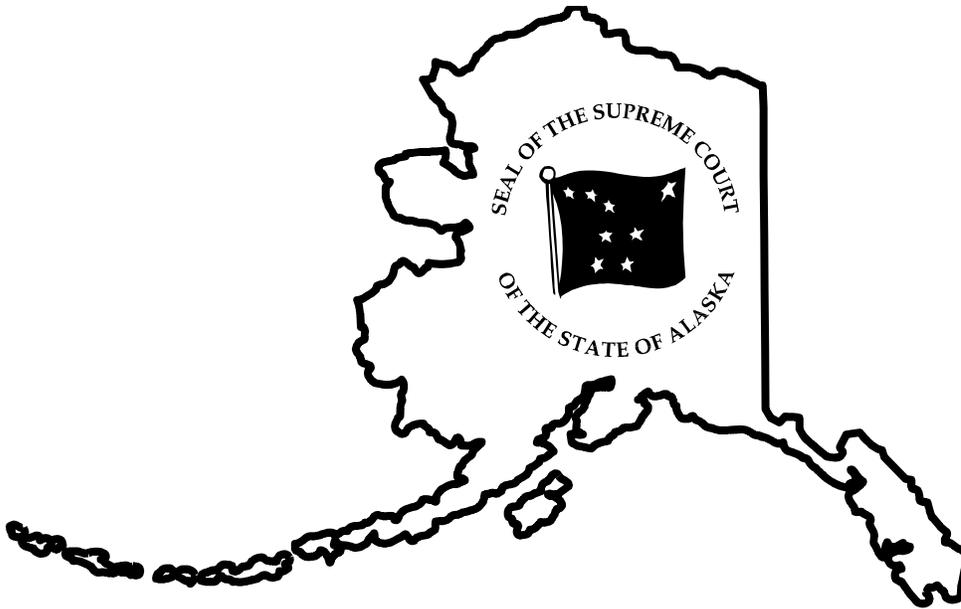


# Alaska Grand Jury Handbook



**Alaska Court System**

**May 2019**

Jury Services Website: [www.courts.alaska.gov/jury](http://www.courts.alaska.gov/jury)



## 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.



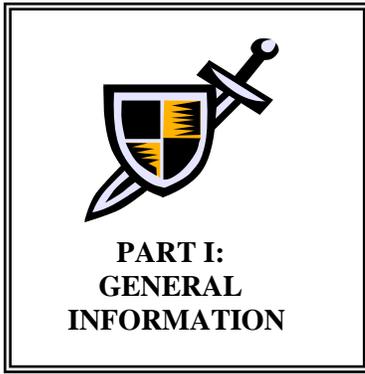
### **If you cannot hear...**

If you cannot hear the proceedings, raise your hand to get the prosecutor 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. Alaska Statutes require a juror to be

- (1) a citizen of the United States;
- (2) a resident of Alaska;
- (3) at least 18 years of age;
- (4) of sound mind;
- (5) in possession of the person's 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 on parole or probation for the offense).<sup>1</sup>

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 to seek a deferral, you should do so as soon as possible. Do not wait until the time you are 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.

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<sup>1</sup> AS 09.20.020



### **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) a judicial officer
- (2) any person who can show that the person's health, the health or proper care of the person's family, a physical or mental disability, or other hardship makes it necessary for the person to be excused
- (3) a teacher in a school that is designated as a low performing school under regulations adopted by the state Board of Education and Early Development. Note: "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 over 70 years of age and request in writing to be permanently excused; or
- (2) have a permanent medical reason you are unable to serve and give the court verification in writing from a medical professional (licensed physician, psychologist, nurse practitioner, physician's assistant or chiropractor) on business stationery or prescription pad that you are permanently unable to serve as a juror for medical reasons.

To request a permanent excusal if you are over 70 years of age, 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 prescription pad from a medical professional (licensed physician, psychologist, nurse practitioner, physician's assistant or chiropractor) on business stationery or prescription pad 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.<sup>2</sup> 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 or courtroom clerk for a *Certificate of Jury Attendance*. The certificate will indicate the dates and times you served.



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

Jurors are not paid for their first day of service. You will be paid \$25 per day, after the first day.

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<sup>2</sup> AS 09.20.037

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 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 reissue 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, contact Unclaimed Property at (907) 465-3726 or e-mail them at [ucproperty@alaska.gov](mailto:ucproperty@alaska.gov). Website: <http://treasury.dor.alaska.gov/> (click on the unclaimed property tab).



### **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: [www.courts.alaska.gov/jury](http://www.courts.alaska.gov/jury)



### **How long must I serve?**

Grand jurors must serve until discharged by the presiding judge, but not longer than four months (unless the judge has good cause to extend the term of the grand jury).

Note: Once your term of service ends, you cannot be required to serve again for at least one year after your last day of actual court attendance (or two years after that date in Anchorage, Fairbanks, and Palmer).<sup>3</sup>



### **What if an emergency keeps me from coming to court?**

It is very important that all jurors report each day they are told to report and that they be on time. If you have an emergency (such as a sudden illness or a death in the family), call the jury clerk immediately.



### **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.

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<sup>3</sup> Administrative Rule 15(f)(3) and AS 09.20.020(1)



**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. So, it is alright to bring something to read or write or some other quiet activity. Once the proceedings begin, you will, of course, need to set aside these activities and devote your full attention to what is happening in the grand jury room.



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

Yes, but note the following:

- 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 conduct 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 which may be presented to the grand jury.

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 items 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](#).

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.*



### **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 – in which 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, possess natural faculties, able to read or speak English, on parole or probation for a felony).
4. The judge asks if anyone believes he or she needs to be excused from service on this grand jury (for health reason, hardship or other reasons). Anyone who asks for an excusal will then need to explain to the judge the reason for the request. The judge will decide whether to grant these requests.
5. Eighteen 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.” Note: This 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 orientation of grand jurors will be done at a later time.



### **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 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.<sup>4</sup>



### **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 that case in order to vote on the case.<sup>5</sup>

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<sup>4</sup> Criminal Rule 6(s)(3)

<sup>5</sup> Criminal Rule 6(s)(4)



### **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 permit you to do so.



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

The following are some reasons for grand jury secrecy:<sup>6</sup>

- (1) To prevent the escape of a person who might be charged by the grand jury.
- (2) To insure 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 of the fact that the person was investigated for a crime.

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<sup>6</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:<sup>7</sup>

- 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 deliberation
- 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>8</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 following 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>7</sup> Criminal Rule 6(h) and (n)(iv)

<sup>8</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”?**

These are 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 following words must be written on the proposed indictment: “not a true bill.”



### **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 to do so.<sup>9</sup>

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.

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<sup>9</sup> Criminal Rule 6(n)(1)

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, the number of jurors who must concur in the indictment in order to return a “true bill” is still 10.



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

The Alaska Statutes<sup>10</sup> say the grand jury will inquire into “all crimes” committed within the court’s jurisdiction. However, as a general rule, the only crimes the prosecutor will bring to the grand jury are felonies. This is because lesser crimes (called “misdemeanors”) do not require a grand jury indictment. The prosecutor can charge these lesser crimes by filing with the court a document called an “information.” Sometimes the prosecutor may choose to present misdemeanors along with felonies to the grand jury.

A “felony” is a crime for which a defendant can be sentenced to imprisonment for more than one year.

A “misdemeanor” is a crime for which a defendant can be sentenced to imprisonment for up to one year, but not more.



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

Cases are presented to the grand jury by the District Attorney or an Assistant District Attorney (who prosecute crimes on behalf of the State of Alaska).

The prosecutor will explain who the prosecutor wants to charge with a crime, describe the crime and the statute or statutes the prosecutor believes were violated. The prosecutor will then present evidence in order to persuade the grand jurors that the person the prosecutor wants to charge has committed the crime. The evidence can be testimony from witnesses (under oath), documents, recordings, photographs, the results of scientific tests, etc.

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<sup>10</sup> AS 12.40.030

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 “count” number.

The prosecutor will prepare a proposed indictment and act as the grand jury's legal advisor, advising it of the applicable law and answering the grand jurors' questions about the law and procedure.<sup>11</sup>

All proceedings before the grand jury, including the testimony of witnesses and any statements made by the prosecuting attorney or by any of the jurors, must be electronically recorded.<sup>12</sup>

It is very important for grand jurors to understand that the grand jury is **not** an arm 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 for the indictment.



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

The grand jurors must decide whether all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.<sup>13</sup>

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 in which the state would present all of the evidence necessary to establish guilt beyond a reasonable doubt. The prosecutor merely has to introduce sufficient evidence to establish a probability of guilt.<sup>14</sup>

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<sup>11</sup> Criminal Rule 6(i); AS 12.40.070; *Cameron v. State*, 171 P.3d 1154, 1156 - 1157 (Alaska 2007)

<sup>12</sup> Criminal Rule 6(j)

<sup>13</sup> Criminal Rule 6(q)

<sup>14</sup> *Sheldon v. State*, 796 P.2d 831 (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. They generally include some specific acts (or failure to act) combined with a specific state of mind at the time the act or omission occurred. The prosecutor will explain them to you, and you must find proof of each element before you can conclude 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>15</sup>

If you know something about a case, you need to tell the prosecutor so it can be determined if you should be disqualified for that case only. 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 district attorney 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>16</sup>

After investigation, the grand jury may be uncertain about whether the facts constitute a crime or whether the defendant can still be prosecuted for it (perhaps because so much time has passed or because the defendant was previously acquitted of the offense or convicted for it). 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

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<sup>15</sup> Criminal Rule 6(q)

<sup>16</sup> AS 12.40.040

writing (without mentioning the name of any person) and give that document to the court.<sup>17</sup> This document is called a “**presentment**.”<sup>18</sup> If the grand jury requests it, the prosecuting attorney is required to assist in the investigation and preparation of the “presentment.”<sup>19</sup> 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 believes he or she cannot be fair and impartial in deciding a case, what should the grand juror do?**

A grand juror who believes he or she cannot be impartial after hearing about a case should tell this to the prosecutor. The prosecutor can excuse the juror from that case and ask the presiding judge to impanel an alternate juror.<sup>20</sup>

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, when the prosecutor presents each case. The prosecutor may then ask such things as 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 an opinion, or have any personal bias or prejudice that might affect how you decide the case.

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<sup>17</sup> Criminal Rule 6(o). Also see *Grand Jury Law and Practice* 2d § 1:8 footnote 3.

<sup>18</sup> 4 Blackstone’s Commentaries 301 ( 1769 ? ) defines “presentment” as “the written notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government.”

<sup>19</sup> AS 12.40.070(3)

<sup>20</sup> Criminal Rule 6(s)(1)



### **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 potential bias is shown, the judge may excuse the juror permanently or for a particular case. If no potential bias is shown, the judge will allow the juror to remain and may take other appropriate action.<sup>21</sup>

The prosecutor can also challenge a seated grand juror "for cause." For example, a grand juror who 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 will not be 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.

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<sup>21</sup> Criminal Rule 6(s)(2)



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

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

- the witness being questioned,
- interpreters, if needed, and
- a deputy court clerk to record what is said.<sup>22</sup>

Note: The following people will **not** be present: the judge, the defendant and the defendant's lawyer.



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

At least 12 members must be present at each session in order to transact any business.



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

Yes. Witnesses should be treated courteously and questions put to them in an orderly fashion. If you have any doubt about whether it is proper 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 District Attorney to subpoena additional witnesses or produce 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.

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<sup>22</sup> Criminal Rule 6(k)



### **Will the grand jury hear evidence on the defendant's behalf?**

The grand jury has no duty to hear evidence on behalf of the defendant, but it may do so if it wants to.<sup>23</sup>

However, when the grand jury has reason to believe that other available evidence will explain away the charge, it must order such evidence to be produced and for that purpose may require the prosecuting attorney to subpoena witnesses.<sup>24</sup>



### **Does the defendant always know that the grand jury is considering charges against him or her?**

No.



### **Can the defendant be present?**

The defendant is usually not present. The defendant can only be present in the grand jury room if called to testify by the prosecutor or the grand jury.<sup>25</sup>

Note: The defendant in a criminal case is never required to testify. The defendant has a constitutional right not to testify (under the Fifth Amendment to the United States Constitution). 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 his/her constitutional privilege not to testify.<sup>26</sup>

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<sup>23</sup> Criminal Rule 6(p)

<sup>24</sup> Criminal Rule 6(q)

<sup>25</sup> Criminal Rule 6(k); *Frink v. State*, 597 P.2d 154, 165 fn. 18 (Alaska 1979)

<sup>26</sup> *Coleman v. State* 553 P.2d 40, 51 (Alaska 1976)

*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*



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

No.



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

Yes. However, it is up to the grand jury whether to grant that request. The prosecutor must inform the grand jury whenever the accused clearly and unconditionally indicates to the state that he or she desires to testify before the grand jury. Once the prosecutor has informed the grand jury of the accused's desire to testify and reminded the grand jury of its ability to call the accused as a witness, the decision whether to permit the accused to testify is up to the grand jury.<sup>27</sup>



**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 which clears or tends to clear the defendant of guilt. It is the opposite of “inculpatory” evidence, which tends to prove guilt.

The prosecutor must present exculpatory evidence so 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 evidence for the defendant and present every lead possibly favorable to the defendant.<sup>28</sup>

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<sup>27</sup> *Cameron v. State* 171 P.3d 1154, 1159 (Alaska 2007)

<sup>28</sup> *Frink v. State*.597 P.2d 154, 164 & 166 (Alaska 1979)

The prosecutor is obligated only to present evidence known to the prosecutor which, in and of itself, tends to negate guilt.<sup>29</sup>



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

After the prosecutor finishes presenting the evidence in the case, the prosecutor and the in-court clerk will leave the grand jury room, so the grand jury can “deliberate” (discuss the case among themselves and decide whether to vote in favor of the indictment).

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.<sup>30</sup> Neither the prosecutor nor the in-court clerk can be present. The deliberations are **not** tape recorded.



### **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.

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<sup>29</sup> *Wilkie v. State* 715 P.2d 1199, 1201 (Alaska App. 1986)

<sup>30</sup> Criminal Rule 6(k)



### **How does the grand jury convey 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.<sup>31</sup> At the end of the day, the foreperson and the prosecutor will present the indictments to a judge in open court. (Note: If the indictment needs to be kept secret because the defendant has not yet been arrested, this hearing will not be public.)<sup>32</sup>

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 you have something to tell him or her without the other grand jurors 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.

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<sup>31</sup> Criminal Rule 6(n)(2)

<sup>32</sup> Criminal Rule 6(l)(2)



*“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.”<sup>33</sup>

The “public welfare or safety” is quite a broad category of topics. Some examples of matters grand juries have previously investigated are:<sup>34</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.<sup>35</sup>
- 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.

<sup>33</sup> AS 12.40.030; Criminal Rule 6.1(a)(1)

<sup>34</sup> Alaska Judicial Council Report on The Investigative Grand Jury in Alaska, February 1986, at pages 33-35.

<sup>35</sup> *O'Leary v. Superior Court*, 816 P.2d 163, 169 (Alaska 1991)

- 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. 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 conducted investigations of alleged misconduct by two state senators. In 1984, an Anchorage grand jury investigated potentially criminal practices related to property and inventory maintained by the Alaska Division of Fish and Wildlife Protection's Aircraft Section. In 1953, a Ketchikan grand jury conducted an investigation into alleged corruption in the Ketchikan police department. A Kenai grand jury in 1973-74 considered allegations of improper conduct by municipal officials, including allegedly inappropriate conduct of a judge.
- 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>36</sup>

***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>36</sup> *O'Leary v. Superior Court*, 816 P.2d 163, 170 (Alaska 1991)



### **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 results in the report.<sup>37</sup>



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

Yes.<sup>38</sup>



### **What happens after the report is presented to the court?<sup>39</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 which 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.

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<sup>37</sup> Criminal Rule 6.1(a)(2)

<sup>38</sup> Criminal Rule 6.1(a)(2)

<sup>39</sup> Criminal Rule 6.1

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."



## PART V GLOSSARY

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 legally presented at a trial, including records, documents, photographs, and testimony of witnesses.

**exculpatory** — “Exculpatory” evidence is evidence which clears or tends to clear the defendant of guilt. It is the opposite of “inculpatory” evidence, which tends to prove guilt.

**exhibit** — A paper, document, or other physical object presented to the court as evidence during a trial.

**felony** — A “felony” is a crime for which a defendant can be sentenced to imprisonment for more than one year.

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

**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.

**information** — the name of the document prosecutors use to charge people with crimes. An “information” can 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) his/her right to have a grand jury decide whether the case has merit.

**lawyer** — A *lawyer* is a person licensed to practice law. Other words for “lawyer” include “attorney” or “counsel.” In criminal cases, the government’s lawyer is often referred to as the “prosecutor.”

**misdemeanor** — A “misdemeanor” is a crime for which a defendant can be sentenced to imprisonment for up to one year, but not more.

**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 “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.

**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 determines what evidence can be presented if there are disputes about the evidence.

**true bill** — These are 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 following words must be written on the proposed indictment: “not a true bill.”

## **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.

## 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 previous page**