

1 **TITLE: GRAND JURY DUE REFORM ACT**

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3 **SUMMARY:**

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5 The purpose of this act is to provide greater transparency, accountability, and fairness for the accused
6 during grand jury proceedings. States that still permit grand jury proceedings before a criminal
7 proceeding can continue ought to have certain safeguards to preserve an accused's due process
8 protections.

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10 **SECTION 1. Legislative Purpose and Findings**

- 11 a. The purpose of this act is to provide greater transparency, accountability, and fairness for the
12 criminally accused during the grand jury proceedings.
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14 b. It is found that the grand jury proceeding has traditionally been a means for the citizens of the United
15 States to stand between the accused and an overzealous government.
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17 c. It is also found, that as time has gone on, the grand jury system has slowly transformed into a
18 proceeding that heavily favors the state, while affording little due process protections for the accused.
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20 d. It is also found that many states have done away with the proceeding altogether in favor of a more
21 open probable cause hearing before a magistrate.
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23 e. It is found that a probable cause hearing likely provides greater protection to the accused than a
24 traditional grand jury proceeding does. However, in states that still allow or require grand jury
25 proceedings before a criminal proceeding can continue, certain safeguards, transparency, and
26 accountability measures are necessary to preserve an accused's due process protections.
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28 **SECTION 2. RECORDING OF GRAND JURY PROCEEDINGS**

- 29 a. All statements made by the grand jury or the attorney representing the state, all questions propounded
30 by the grand jury or the attorney representing the state to a witness, including a witness who is an
31 accused or suspected person, and all testimony of a witness, including the accused or suspected
32 person, shall be recorded either by a stenographer or by use of an electronic device capable of
33 recording sound. Deliberations of the grand jury may not be recorded.
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35 b. A motion to set aside an indictment due to an intentional failure to record all or part of the
36 proceedings as required under this article must be filed in writing not later than the 45th day after the
37 date the presentment of the indictment is entered in the record, unless the defendant demonstrates that
38 the defendant did not have a previous opportunity to challenge the failure to record the grand jury
39 proceedings.
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41 a. The clerk of the court shall maintain possession of all records made and may not release any record of
42 the proceedings unless authorized by Section 3.
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44 **SECTION 3. DISCLOSURE OF TRANSCRIPT OF GRAND JURY PROCEEDINGS.**

- 45 a. The accused or suspected person or the attorney representing the state may request from the clerk of
46 the court a copy of the transcript not later than the 20th day after the date the presentment of the
47 indictment is entered in the record under unless good cause is shown for a late request.
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49 b. On receiving a request under Subsection (a), the clerk of the court shall transcribe the recording, if
50 necessary, and deliver the transcript to the attorney representing the state.
51
52 c. After receiving the transcript, attorney representing the state shall:
53 1. after considering the security and privacy interests of each witness or victim, redact any
54 portion of the transcript that includes identifying information of a witness or victim with a
55 privacy or security concern, including the name of the witness or victim and any other
56 information that by reference would make it possible to identify the witness or victim; and
57 2. deliver the transcript to the accused or suspected person.
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59 d. On request of the defendant, the court shall conduct a hearing to determine whether certain redactions
60 were necessary and whether changes to the redactions should be made.
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62 e. The accused or suspected person shall pay any necessary costs incurred by the clerk of the court in
63 transcribing a recording in response to a request submitted by the person. The court may waive or
64 reduce the costs if they determine person is indigent or demonstrates an inability to pay.

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66 f. The attorney representing the state, the accused or suspected person, or the attorney representing the
67 accused or suspected person may disclose the contents of a transcript of a grand jury proceeding
68 obtained under this article during a criminal proceeding that arises from the grand jury proceeding if
69 ordered by a magistrate.
70
71 g. Except as otherwise authorized by Subsection (f), the accused or suspected person, the attorney
72 representing the accused or suspected person, or an investigator, expert, consulting legal counsel, or
73 other agent of the attorney representing the accused or suspected person may not disclose to a third
74 party a transcript received under this article unless:
75 1. for good cause, a court orders the disclosure after notice and a hearing and after considering
76 the security and privacy interests of any witness or victim; or
77 2. the transcript has already been publicly disclosed.
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79 h. A person who receives information under this section and discloses that information in a manner not
80 authorized by law is subject to punishment for contempt.
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82 **SECTION 4. PRESENTING A SUBSEQUENT INVESTIGATION TO A GRAND JURY AFTER**
83 **A NO BILL OF INDICTMENT.**

- 84 a. Except as provided by Subsection (b), a grand jury may not investigate a person who is accused or
85 suspected of an offense and may not vote to present an indictment for the offense if the person has
86 previously been investigated by a grand jury for the same offense and that grand jury found no bill of
87 indictment.
88
89 b. A grand jury may investigate, and may present an indictment with respect to, a person described by
90 Subsection (a) only if the attorney representing the state establishes in an ex parte hearing that:
91 1. the person has previously been investigated by a grand jury only once for the same offense;
92 and
93 2. it is in the interest of justice for the person to be investigated by a subsequent grand jury for
94 the same offense.
95
96 c. A motion to set aside an indictment due to a violation of this article must be filed in writing not later
97 than the 45th day after the date the presentment of the indictment is entered in the record unless the
98 defendant demonstrates that the defendant did not have a previous opportunity to challenge the grand
99 jury investigation based on the violation of this article.
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101 **SECTION 5. ATTORNEY ENTITLED TO APPEAR.**

- 102 a. A witness who testifies before a grand jury, including a witness who is an accused or suspected
103 person, is entitled to have their attorney present while the grand jury is questioning the witness or
104 while the witness is otherwise providing testimony to the grand jury.
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106 b. An attorney representing a witness, including the accused, may only speak to the person the attorney
107 represents and may not speak to the grand jury regarding the grand jury investigation.
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109 c. This section does not provide a witness who is not the accused a right to counsel.
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111 d. A witness may not delay the grand jury proceedings solely because his or her attorney is not present
112 while they are testifying.
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114 **SECTION 6. REASONABLE NOTICE TO ACCUSED OR WITNESS TO RETAIN COUNSEL.**

- 115 a. Absent exigent circumstances, a person who is subpoenaed to appear as a witness, including the
116 accused before a grand jury shall be given a reasonable opportunity to retain counsel and to consult
117 with counsel before the person's appearance.
118
119 b. The grand jury testimony of a witness who is not provided a reasonable opportunity to retain and
120 consult with counsel may not be used by the state in a subsequent legal proceeding, unless:
121 1. the testimony is initially introduced by the defendant in the proceeding; or
122 2. the attorney representing the state proves by a preponderance of the evidence that exigent
123 circumstances existed to prevent the witness from receiving a reasonable opportunity to retain
124 and consult with counsel before the witness's testimony.
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126 **SECTION 7. EXCULPATORY EVIDENCE INTRODUCED BY STATE.**

- 127 a. The attorney representing the state shall present to a grand jury investigating an offense any evidence
128 that tends to negate the guilt of the accused or suspected person and is in the possession, custody, or
129 control of the attorney representing the state.

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131 b. A motion to set aside an indictment based on a failure to present exculpatory evidence to the grand
132 jury in violation of this article must be filed in writing not later than the 60th day after the date the
133 presentment of the indictment is entered in the record unless the defendant demonstrates that the
134 defendant did not have a previous opportunity to challenge the failure to present the exculpatory
135 evidence to the grand jury.
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