

## IC 35-34-2

### Chapter 2. Grand Jury and Special Grand Jury

#### IC 35-34-2-1

##### "Target" defined

Sec. 1. As used in this chapter:

"Target" means a person who has been charged by information for an offense the grand jury is investigating, or who is a subject of the grand jury investigation.

*As added by Acts 1981, P.L.298, SEC.3.*

#### IC 35-34-2-2

##### Number; impaneling; scope of function and authority; convening

Sec. 2. (a) A grand jury shall consist of six (6) grand jurors and one (1) alternate and may be impaneled by the circuit court or a superior court with criminal jurisdiction. A grand jury shall hear and examine evidence concerning crimes and shall take action with respect to this evidence as provided by law.

(b) The court shall call the grand jury into session at the request of the prosecuting attorney. The court may also convene the grand jury without a request from the prosecuting attorney. The grand jury shall be convened by the judge issuing an order requiring the jury to meet at a time specified.

(c) A grand jury may not remain in session for more than six (6) months.

(d) An alternate impaneled under this section shall appear and hear all evidence presented to the grand jury but may not comment, deliberate, or vote unless there is not a quorum of grand jurors for a particular session.

*As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.23; P.L.4-1998, SEC.12.*

#### IC 35-34-2-3

##### Drawing, selecting, and impaneling; discharge of panel or juror; grounds; foreman and clerk; minutes; record transcript; oath; instructions; report of offense

Sec. 3. (a) The jurors on a grand jury and one (1) alternate shall be drawn, selected, and impaneled by the procedure set out in IC 33-28-5.

(b) Whenever the court finds that the original panel was not selected in substantial conformity with the requirements of law for the selection of the panel, the court shall discharge the panel and summon another panel.

(c) Whenever the court finds that a grand juror:

- (1) is disqualified from service under law;
- (2) is incapable of performing the juror's duties because of bias or prejudice;
- (3) is guilty of misconduct in the performance of the juror's duties that might impair the proper functioning of the grand

jury;

(4) is under the age of eighteen (18) years;

(5) is not a resident of the county;

(6) is an alien;

(7) is a mentally incompetent person;

(8) is a witness for the prosecution;

(9) has such a state of mind in reference to a target that the juror cannot act impartially and without prejudice to the substantial rights of that person;

(10) holds a juror's place on the grand jury by reason of the corruption of the officer who selected and impaneled the grand jury; or

(11) has requested or otherwise caused any officer or an officer's deputy to place the juror upon the grand jury;

the court shall refuse to swear that grand juror or, if the juror has been sworn, shall discharge that grand juror and swear another grand juror.

(d) After a grand jury has been impaneled, the court that called the grand jury shall appoint one (1) of the grand jurors as foreman and one (1) as clerk. During any absence of the foreman or clerk, the grand jury shall select one (1) of their number to act as foreman or clerk. The clerk shall keep minutes of the grand jury proceedings. The court shall supply a means for recording the evidence presented before the grand jury and all of the other proceedings that occur before the grand jury, except for the deliberations and voting of the grand jury and other discussions when the members of the grand jury are the only persons present in the grand jury room. The evidence and proceedings shall be recorded in the same manner as evidence and proceedings are recorded in the court that impaneled the grand jury. When ordered by the court, a transcript or a copy of the recording shall be prepared and supplied to the requesting party. If the transcript is supplied, it shall be at the cost of the party requesting it. If a copy of the recording is supplied, the party requesting it is responsible for the actual cost of reproduction. If a transcript has already been prepared, the requesting party is responsible for the actual cost of obtaining the copy. If the court finds the requesting party is an indigent defendant, the cost of the transcript or copy of the recording supplied to the defendant shall be paid by the county.

(e) The following oath must be administered to the grand jury:

"You, and each of you, do solemnly swear or affirm that you will diligently inquire and make true presentment of all offenses committed or triable within this county, of which you have or can obtain legal evidence; that you will present no person through malice, hatred, ill will, nor leave any unrepresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your indictments you will present the truth, the whole truth, and nothing but the truth; that you will not disclose any evidence given or proceeding had before the grand jury; that you will keep secret whatever you or

any other grand juror may have said or in what manner you or any other grand juror may have voted on a matter before the grand jury."

(f) The court shall provide a printed copy of the provisions of this chapter to the grand jury upon the request of any member of the grand jury. In addition, the court shall give the grand jurors any instructions relating to the proper performance of their duties that the court considers necessary.

(g) If a member of the grand jury has reason to believe that an offense has been committed which is triable in the county, the member may report this information to fellow jurors, who may then investigate the alleged offense.

*As added by Acts 1981, P.L.298, SEC.3. Amended by Acts 1982, P.L.204, SEC.24; P.L.320-1983, SEC.14; P.L.312-1985, SEC.3; P.L.169-1988, SEC.6; P.L.33-1989, SEC.124; P.L.4-1998, SEC.13; P.L.98-2004, SEC.144; P.L.118-2007, SEC.29.*

#### **IC 35-34-2-4**

##### **Conduct of proceedings**

Sec. 4. (a) The proceedings of a grand jury are not valid unless at least five (5) of its members are present.

(b) The foreman shall administer an oath to any witness appearing before the grand jury.

(c) The prosecuting attorney, his staff and any witness the prosecuting attorney or the grand jury requests to be present may be present at any time during grand jury proceedings, except as provided in subsection (h).

(d) The grand jury may request assistance from a clerk, or other public servant, authorized by the court to assist the grand jury in the administrative conduct of its proceedings. Such a clerk or other public servant may be present during any grand jury proceedings, except as specified in subsection (h).

(e) The person recording the proceedings may be present during the proceedings except as specified in subsection (h).

(f) The grand jury may request the court to provide an interpreter to assist the grand jury in understanding the testimony of any witness, and the court shall provide an interpreter when requested. Before assuming his duties with the grand jury, an interpreter shall take an oath before the grand jury that he will faithfully interpret all testimony of the witness and that he will keep secret all matters before the grand jury that are within his knowledge. He may be present as requested by the grand jury, except as set out in subsection (h).

(g) When a person held in official custody is a witness before the grand jury, a public servant assigned to guard him may accompany him in the grand jury room. However, before entering the grand jury room for that purpose, the public servant shall take an oath before the grand jury that he will keep secret all matters before the grand jury that are within his knowledge.

(h) During the deliberations and voting of the grand jury, only the grand jurors may be present in the grand jury room.

(i) Grand jury proceedings shall be secret, and no person present during a grand jury proceeding may, except in the lawful discharge of his duties or upon written order of the court impaneling the grand jury or the court trying the case on indictment presented by the grand jury, disclose:

- (1) the nature or substance of any grand jury testimony; or
- (2) any decision, result, or other matter attending the grand jury proceeding.

However, any court may require any person present during a proceeding to disclose the testimony of a witness as direct evidence in a prosecution for perjury.

(j) The grand jury shall be the exclusive judge of the facts with respect to any matter before it.

(k) The court and the prosecuting attorney shall be the legal advisors of the grand jury, and the grand jury may not seek or receive legal advice from any other source.

(l) The grand jury may not, without court permission, exercise any of its functions in any place other than that designated by the court.  
*As added by Acts 1981, P.L.298, SEC.3.*

#### **IC 35-34-2-5**

##### **Subpoenas; contents; failure to obey; contempt**

Sec. 5. (a) A subpoena duces tecum or subpoena ad testificandum summoning a witness to appear before the grand jury shall be issued by the clerk upon the request of the grand jury or prosecuting attorney. The subpoena must contain a statement of the general nature of the grand jury inquiry.

(b) If the subpoena is issued to a target, the subpoena shall also contain a statement informing the target that:

- (1) he is a subject of the grand jury investigation;
- (2) he has the right to consult with an attorney and to be assisted by an attorney under section 13 of this chapter; and
- (3) if he cannot afford an attorney, the court inpaneling the grand jury will appoint one for him, upon request.

(c) If a witness fails to appear at the time and place stated in the subpoena, the court may hold him in contempt of court, unless he had filed a motion to quash the subpoena and the motion has been granted or was pending at the time he was to have appeared.

*As added by Acts 1981, P.L.298, SEC.3. Amended by P.L.320-1983, SEC.15; P.L.170-1984, SEC.2.*

#### **IC 35-34-2-5.5**

##### **Target witnesses; right to counsel; removal of attorney**

Sec. 5.5. (a) A target subpoenaed under section 5 of this chapter is entitled to the assistance of his attorney when the person is questioned in the grand jury room, subject to this section.

(b) The target's attorney:

- (1) must take an oath of secrecy administered by the foreman;
- (2) while in the grand jury room may not, without first obtaining the consent of the prosecutor and the foreman:
  - (A) address the grand jury or the prosecuting attorney;
  - (B) make objections or arguments;
  - (C) question any person; or
  - (D) otherwise participate in the proceeding; and
- (3) may advise the client so long as the conversation is not overheard by any member of the grand jury.

(c) The court that impaneled the grand jury may remove any attorney from the grand jury room and may find him to be in contempt of court if the attorney has violated the requirements of subsection (b) or has otherwise disrupted or unnecessarily delayed the grand jury proceeding.

*As added by P.L.170-1984, SEC.3.*

#### **IC 35-34-2-6**

##### **Motion to quash subpoena duces tecum; use immunity**

Sec. 6. (a) Any witness may file a motion to quash a subpoena duces tecum directed to that witness. The motion must include a statement of the facts and grounds in support of the objection to the subpoena. The court shall:

- (1) promptly conduct a hearing on the motion; and
- (2) at the conclusion of the hearing, enter findings in support of its ruling.

(b) A target who is subpoenaed may move to quash a subpoena based upon his privilege against self-incrimination. The court shall grant the motion, unless the prosecuting attorney makes a written request that the target be granted use immunity in accordance with section 8 of this chapter. Upon request by the prosecuting attorney, the court shall grant use immunity to the target and order him to comply with the subpoena.

*As added by Acts 1981, P.L.298, SEC.3.*

#### **IC 35-34-2-7**

##### **Witnesses; refusal to answer; compelling testimony**

Sec. 7. (a) If a witness before the grand jury refuses to answer any question or produce any item, the prosecutor may inform the court, in writing, of the question asked or item sought and the reason given for the refusal. The court shall, after a hearing, decide whether the witness is required to answer the question or produce the item and the witness shall be informed immediately of the court's decision.

(b) If the court determines that the witness must answer the question or produce the item and the witness continues to refuse, he shall be brought before the court and the court shall proceed as if the witness had refused in open court.

(c) If the court determines that the witness may properly refuse to answer a question or produce an item based upon his privilege against self-incrimination, the prosecutor may request the court to

grant use immunity to the witness under section 8 of this chapter.  
*As added by Acts 1981, P.L.298, SEC.3.*

#### **IC 35-34-2-8**

##### **Witnesses; use immunity**

Sec. 8. (a) Upon request by the prosecuting attorney, the court shall grant use immunity to a witness before the grand jury. The court shall instruct the witness by written order or in open court that any evidence the witness gives before the grand jury, or evidence derived from that evidence, may not be used in any criminal prosecution against that witness, unless the evidence is volunteered by the witness or is not responsive to a question by the grand jury or the prosecutor. The court shall then instruct the witness that the witness must answer the questions asked and produce the items requested.

(b) A grant of use immunity does not prohibit the use of evidence the witness gives in a prosecution for perjury under IC 35-44.1-2-1.

(c) If a witness refuses to give evidence after the witness has been granted use immunity, the witness shall be brought before the court and the court shall proceed as if the witness had refused in open court.

*As added by Acts 1981, P.L.298, SEC.3. Amended by P.L.126-2012, SEC.48.*

#### **IC 35-34-2-9**

##### **Right to testify before grand jury; target of investigation; notification; waiver of immunity; calling of witnesses**

Sec. 9. (a) Except as provided by subsection (b) of this section, no person has a right to appear as a witness before the grand jury or to present any evidence or information to the grand jury.

(b) A target of a grand jury investigation shall be given the right to testify before the grand jury, provided he signs a waiver of immunity. The prosecuting attorney shall notify a target of his opportunity to testify unless:

- (1) notification may result in flight or endanger other persons or obstruct justice; or
- (2) the prosecutor is unable, with reasonable diligence, to notify him.

(c) The prosecuting attorney or grand jury may call as a witness in a grand jury proceeding any person believed to possess relevant information or knowledge.

*As added by Acts 1981, P.L.298, SEC.3.*

#### **IC 35-34-2-10**

##### **Unauthorized disclosure of grand jury information; offense; production of transcript**

Sec. 10. (a) Except when required to do so by law, a person who has been present at a grand jury proceeding and who knowingly or intentionally discloses:

- (1) any evidence or testimony given or produced;

(2) what a grand juror said; or  
(3) the vote of any grand juror;  
to any other person, except to a person who was also present or entitled to be present at that proceeding or to the prosecuting attorney or his representative, commits unauthorized disclosure of grand jury information, a Class B misdemeanor.

(b) The transcript of testimony of a witness before a grand jury may be produced only:

(1) for the official use of the prosecuting attorney; or

(2) upon order of:

(A) the court which impaneled the grand jury;

(B) the court trying a case upon an indictment of the grand jury; or

(C) a court trying a prosecution for perjury;

but only after a showing of particularized need for the transcript.

*As added by Acts 1981, P.L.298, SEC.3. Amended by P.L.312-1985, SEC.4.*

#### **IC 35-34-2-11**

##### **Access to local government facilities for care or custody of persons**

Sec. 11. The grand jury shall have free access, at all reasonable times, to any county, city, or town facility where persons are held in care or custody of such county, city, or town, for the purpose of examining their condition and management.

*As added by Acts 1981, P.L.298, SEC.3.*

#### **IC 35-34-2-12**

##### **Identification of target and offense; validity of indictment; concurrence of five grand jurors; signatures; endorsement**

Sec. 12. (a) Before the grand jury proceeds to deliberate on whether to issue an indictment, the prosecuting attorney shall, on the record:

(1) identify each target of the grand jury proceeding; and

(2) identify each offense that each target is alleged to have committed.

(b) Before an indictment is valid, at least five (5) grand jurors must concur in the finding of the indictment, and it must be:

(1) signed by the prosecuting attorney or his deputy;

(2) endorsed with the phrase "a true bill"; and

(3) signed by the foreman of the grand jury or five (5) members of the grand jury.

(c) An indictment is not valid unless the offense that the indictment charges the defendant committed is an offense that is contained on the record under subsection (a).

(d) An indictment is not valid if it indicts the target of a previous grand jury who:

(1) was identified under subsection (a)(1);

(2) was the target of a previous grand jury that proceeded to deliberate on whether to issue an indictment, and voted not to

indict the defendant for the offense identified to the previous grand jury under subsection (a)(2); and

(3) was alleged to have committed an offense identified to a previous grand jury under subsection (a)(2).

However, if the prosecuting attorney shows that there is newly discovered material evidence that was not presented to the previous grand jury before the grand jury's failure to indict, then the indictment is not defective.

*As added by Acts 1981, P.L.298, SEC.3. Amended by P.L.312-1985, SEC.2.*

### **IC 35-34-2-13**

#### **Extension of term; limitation**

Sec. 13. The judge of any court having criminal jurisdiction may, upon due cause shown by petition of the prosecuting attorney of the judicial circuit, extend the terms of the members of a grand jury then convened for an additional term of three (3) months or more, as requested by the prosecuting attorney. The terms of the members of any grand jury may be so extended for successive periods of increments of three (3) months or more, to a total length of no more than two (2) years.

*As added by P.L.171-1984, SEC.75.*

### **IC 35-34-2-14**

#### **Special grand jury; powers and duties; term**

Sec. 14. (a) The judge of any court having criminal jurisdiction may, upon due cause shown by petition of the prosecuting attorney of the judicial circuit, order the clerk of the courts, or jury administrator (as defined in IC 33-28-5-3) to draw the names of competent persons to be summoned to serve on a special grand jury, which shall serve in addition to the grand jury regularly summoned and convened pursuant to law.

(b) A special grand jury has the powers and duties of a grand jury prescribed by law.

(c) The members of the special grand jury serve terms of three (3) months or more, as requested by the prosecuting attorney. The terms of members of a special grand jury shall be extended for the same period of time and in the same manner in which the terms of grand jury members may be extended under section 13 of this chapter.

*As added by P.L.171-1984, SEC.76. Amended by P.L.98-2004, SEC.145; P.L.118-2007, SEC.30.*

### **IC 35-34-2-15**

#### **Special grand jury; number and names to be drawn; investigation of panel; issuance of venires or summonses**

Sec. 15. When names of grand jurors are ordered drawn to be summoned under section 14 of this chapter, the judge shall specify the number of names to be drawn, and shall enter an order in sufficient time before the grand jury session to permit counsel to



know and investigate the panel of special grand jurors. The order of names listed in the panel and called for service and entered in the order book of the court shall be the same as that provided in IC 33-28-5. The clerk shall issue summonses for such jurors as the courts may direct. The sheriff or bailiff shall then call the special grand jurors to the jury box in the same order as that in which their names were drawn from the jury pool and certified thereto.

*As added by P.L.171-1984, SEC.77. Amended by P.L.98-2004, SEC.146; P.L.118-2007, SEC.31.*