

## **CHAPTER 29-10.1 GRAND JURY**

### **29-10.1-01. Grand jury defined - Formation - Functions.**

A grand jury must consist of not less than eight nor more than eleven persons of the county possessing the qualifications of jurors prescribed by law, and impaneled and sworn to inquire into all crimes or public offenses against laws of this state triable within the county and, if the evidence warrants, present them to the district court by written indictment.

### **29-10.1-02. When grand jury may be called.**

No grand jury may be drawn, summoned, or convened in any county within this state unless the district judge thereof shall so direct by a written order filed with the clerk of the court in the county wherein the said grand jury is required to attend. Any judge of the district court for any county must direct, in the manner herein provided, that a grand jury be drawn and summoned to attend whenever:

1. The judge deems the attendance of a grand jury necessary for the due enforcement of the laws of the state;
2. The state's attorney of the county wherein the court is to be held, in writing, requests the judge so to do; or
3. A petition in writing requesting the same is presented to the judge, signed by qualified electors of the county equal in number to at least twenty-five percent of the total vote cast in the county for the office of governor of the state at the last general election, but the number of signatures required may not be fewer than two hundred twenty-five nor exceed five thousand.

### **29-10.1-03. Judge to summon grand jury.**

Upon presentment of the request of petition, the judge shall promptly summon and convene the grand jury.

### **29-10.1-04. Petition for grand jury - Petitioners - Number - Session.**

The petition for a grand jury prescribed by section 29-10.1-02 must be verified on information and belief by at least three of the petitioners. The formation of a grand jury under this chapter may not be invalidated should it appear or be proven after the grand jury has been summoned that any of the petitioners were not qualified electors or that the petition was not signed by the required number of qualified electors. No grand jury may remain in session in excess of ten calendar days, unless the judge by written order filed with the clerk of the court extends the session as may be necessary. Unless extended, the grand jury must be discharged at the close of the tenth day of its session. Saturdays, legal holidays, and days in recess must be excluded in computing the duration of the initial or extended session.

### **29-10.1-05. Challenges by state, when, and causes.**

1. The state may challenge the panel of a grand jury or an individual grand juror at any time before the grand jury is impaneled and sworn.
2. A challenge to the panel may be asserted by the state upon the ground only that the grand jurors were not selected according to law.
3. A challenge to an individual grand juror may be asserted by the state upon the ground only that the person is not a qualified juror.

### **29-10.1-06. Challenge may be oral or written.**

A challenge to the panel or to an individual grand juror may be oral or in writing and must be tried to the court.

### **29-10.1-07. Challenge allowed or disallowed - Entry by clerk.**

The court shall allow or disallow a challenge to the panel of a grand jury or to an individual grand juror, and the clerk shall enter its decision upon the minutes.

**29-10.1-08. Challenge allowed - Procedure.**

Whenever a challenge to the panel or to an individual grand juror is allowed, the court shall make an order to the jury commission to summon without delay a sufficient number of persons to complete or to form a grand jury.

**29-10.1-09. Jury discharged if challenge to panel allowed.**

If a challenge to the panel is allowed, the grand jury must be discharged in which event the judge may order another grand jury to be summoned and convened.

**29-10.1-10. Challenge to panel after indictment presented.**

At any time prior to pleading to the indictment, the person against whom an indictment has been found and presented may move the court to dismiss the indictment upon the ground that the jurors were not selected or impaneled according to law.

**29-10.1-11. Court to appoint foreman and vice foreman.**

When the grand jury is completed, the court shall appoint one of the jurors to be foreman and another to act as foreman in case of the absence of the foreman.

**29-10.1-12. Oath of grand jurors.**

Superseded by N.D.R.Ct. 6.10.

**29-10.1-13. Court shall charge grand jury - Duty of court to advise.**

After the grand jury is impaneled and sworn, the court shall charge the jurors concerning the offenses that may be considered by them or that are likely to come before them, and concerning their duties as prescribed by law. The court, upon request of the grand jurors and at all reasonable times, shall advise them regarding their duties.

**29-10.1-14. Retirement of grand jurors.**

After the charge by the court, the grand jurors shall retire to a private room which must be provided for by the county commissioners and perform their duties as prescribed by law.

**29-10.1-15. Clerk appointment by grand jurors - Duty.**

The grand jury, unless a competent reporter is appointed, shall appoint a member of the jury as clerk, who shall preserve minutes of all the proceedings of the jurors, and exhibits presented, except of the votes of the individual members, and of the evidence given before them. Upon the conclusion of the grand jury session, all exhibits must be placed in the custody of the state's attorney unless otherwise directed by the court.

**29-10.1-16. Reporter - Transcript.**

1. Unless otherwise directed by the court, the grand jury shall appoint a competent reporter who must be sworn and who shall record in shorthand or stenotype notes, the testimony given in matters before the grand jury. Whenever an indictment is returned, and if so directed by the court, the reporter shall cause the testimony to be transcribed.
2. Whenever the court directs the testimony to be transcribed, the reporter shall certify and file with the clerk of court the original and sufficient copies of the transcript so as to provide a copy for each person indicted and one for the state's attorney or prosecutor. The reporter shall complete the certification of the transcript within thirty days after the date of the order unless a different period of time is specified by the court.
3. All exhibits presented to the grand jury must be placed in the custody of the state's attorney or prosecutor unless otherwise directed by the court.

**29-10.1-17. Selection of jurors.**

Before accepting a person drawn as a grand juror, the court must be satisfied that such person is duly qualified to act as such. A person drawn as a juror may be excused for good cause by the court before the person is sworn.

**29-10.1-18. Expenses.**

All necessary expenses of the grand jury incurred in its official capacity must be paid by the state out of funds appropriated to the supreme court.

**29-10.1-19. Subpoenas.**

The grand jury may issue subpoenas or subpoenas duces tecum to any witness within the state. Subpoenas may also be issued by the state's attorney or prosecutor in the manner provided in the statutes or North Dakota Rules of Criminal Procedure.

**29-10.1-20. Filling vacancies.**

Whenever the membership of a grand jury is reduced in number for any reason, after the grand jury has been impaneled, the judge may direct that the vacancy be filled, and shall so direct if necessary to maintain the minimum number required, in the same manner as the original members were selected. No person selected as a grand juror to fill a vacancy may vote on any matter upon which evidence has been taken prior to the time of the person's selection.

**29-10.1-21. General duties of grand jury.**

Each grand jury impaneled within any county shall inquire into offenses against the criminal laws of the state alleged to have been committed within that county. The alleged offenses may be brought to the attention of the grand jury by the court or by any state's attorney or the state's attorney's designee. The state's attorney or the state's attorney's designee shall inform the grand jury of the alleged offense, the identity of the alleged offender, and the state's attorney or state's attorney's designee's action or recommendation. As to any offense committed while the grand jury is in session, the state's attorney or prosecutor may proceed with a preliminary examination or the filing of an information, as provided for by law, and prosecute the charge, and, under such conditions, the grand jury is not required to inquire into such offense. The presentment of an indictment against a person does not preclude the prosecution of such person for the same offense upon a criminal complaint or information previously filed with the court.

**29-10.1-22. Subjects of grand jury inquiry.**

Whenever directed by the district court, the grand jury shall inquire into:

1. The condition and management of the public prisons in the county; and
2. Willful and corrupt felonious misconduct in office of public officials of every description in the county.

**29-10.1-23. Grand jurors entitled to access to prisons and public records.**

Grand jurors are entitled to free access, at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county.

**29-10.1-24. Member must report known offense and must give evidence.**

If a member of a grand jury knows or has reason to believe that a public offense which is triable in the county has been committed, the member shall declare such fact to the member's fellow jurors, who shall investigate the same. In such investigation, the grand juror may be sworn as a witness.

**29-10.1-25. Oath or affirmation to witness.**

Superseded by N.D.R.Ct. 6.10.

**29-10.1-26. Reception of evidence.**

1. Subject to subsection 2, the grand jury shall receive only evidence which is:
  - a. Given by witnesses produced and sworn before the grand jury;
  - b. Furnished by writings, material objects, or other things perceivable through the senses; or

- c. Contained in a deposition or transcript that is admissible under the North Dakota Rules of Criminal Procedure.
2. The grand jury shall receive only evidence that would be admissible over objection at the trial of a criminal action, but the fact the evidence inadmissible at the trial was received by the grand jury does not render the indictment void if sufficient competent evidence to support the indictment was received by the grand jury.

**29-10.1-27. Exculpatory evidence.**

The grand jury shall weigh all the evidence submitted to it, and when it has reason to believe that there is exculpatory evidence within its reach, it shall order the evidence to be produced, and for that purpose may require the state's attorney or prosecutor to issue process for the production of such evidence.

**29-10.1-28. Who may be present during sessions of grand jury.**

No person may be present at a session of the grand jury, other than the witnesses under examination, the judge while giving advice requested by the grand jury, the state's attorney or prosecutor, the attorney general, and the reporter, or interpreter, if any. No person other than the grand jurors may be present while the grand jurors are deliberating or voting, nor may the grand jurors deliberate or vote while any other persons are present. Whenever the grand jury is investigating the state's attorney or any person connected with the state's attorney's office, neither the state's attorney nor any of the state's attorney's assistants or staff may be present before such grand jury during the time of such investigation, except as a witness and, after such appearance as a witness, shall leave the place where the grand jury is in session.

**29-10.1-29. Duty of state's attorney.**

The state's attorney or prosecutor, upon the request of the grand jurors, shall advise them regarding their duties. The state's attorney or prosecutor, at all reasonable times, may appear before them on the person's own motion for the purpose of giving the grand jurors information or advice regarding any matter cognizable by them and may interrogate witnesses before them whenever the state's attorney or prosecutor believes it necessary.

**29-10.1-30. Secrecy of things said and votes - Limited disclosure by certain persons and under certain conditions.**

1. Every member of a grand jury shall keep secret whatever that member or any other grand juror may have said, or in what manner that member or any other grand juror may have voted on a matter before the jurors.
2. Matters other than the deliberations and vote of any grand juror may be disclosed by the state's attorney, prosecutor, or attorney general solely in the performance of the person's duties.
3. Otherwise a juror, attorney, interpreter, reporter, or public servant, having official duties in or about a grand jury room or proceeding, may disclose matters occurring before the grand jury only when so directed by the court pursuant to section 29-10.1-31.
4. A witness may not disclose any matter about which the witness is interrogated, or any proceedings of the grand jury had in the witness's presence, except to the witness's attorney or when so directed by the court, until an indictment is filed and the accused person is in custody.

**29-10.1-31. When juror may disclose testimony upon order of the court.**

A member of a grand jury or its reporter or interpreter may be required by any court to disclose the testimony of a witness examined before the grand jury for the purpose of impeachment of the witness before the court, or to disclose the testimony given before them by any person, upon a charge against the person for perjury in giving the person's testimony, or upon the person's trial in a criminal prosecution.

**29-10.1-32. Grand juror cannot be questioned.**

A grand juror cannot be questioned for anything the grand juror may say, or any vote the grand juror may give, in a session of the grand jury, relative to a matter legally pending before the jurors, except upon a charge against the grand juror for perjury in giving the person's testimony to the person's fellow jurors.

**29-10.1-33. When indictment ought to be found.**

The grand jurors shall find an indictment charging a person with the commission of an offense when all the evidence before them, taken together, is such as in their judgment would warrant a conviction by the trial jury.

**29-10.1-34. Finding indictment - Number of jurors required.**

An indictment cannot be found without the concurrence of at least six grand jurors. Whenever so found, it must be endorsed "a true bill" and the endorsement must be signed by the foreman of the grand jury. The names of the witnesses known to the grand jury must be endorsed thereon before the indictment is presented to the court.

**29-10.1-35. Presentment of indictment to court by foreman.**

An indictment found by the grand jurors must be presented by the foreman, in their presence, to the court, and must be filed with the clerk.

**29-10.1-36. Persons indicted - How arrested.**

Whenever an indictment is found and presented against a person, the proceedings prescribed in chapter 29-12 govern when necessary to secure the person's appearance before the court.

**29-10.1-37. Jurors to be discharged upon completion of business.**

Upon the completion of the business before them, or whenever the court is of opinion that the public interests will not be served by further continuation of their sessions, the grand jurors must be discharged by the court.

**29-10.1-38. Transcript demand - Waiver of transcript and preliminary examination, when.**

Within five days after a first appearance before a magistrate, the person against whom an indictment has been found and presented may make a written demand to the district judge for a copy of the transcript of the testimony given before the grand jury as it relates to that person and the charges against that person. Upon receipt of such written demand, the judge shall issue an appropriate order. If the judge for any reason determines that a copy of a transcript of the testimony cannot be obtained, the person indicted is entitled, but not otherwise, to a preliminary examination, as provided by the statutes or North Dakota Rules of Criminal Procedure for persons otherwise charged with a crime. Under such conditions, the preliminary examination must be had before a judge of the district court serving the county in which the crime was committed or is triable. Failure to make such demand within the time prescribed constitutes a waiver of the right to the transcript or to a preliminary examination.

**29-10.1-39. Violation constitutes contempt.**

Any person who willfully violates any provision of this chapter is guilty of contempt of court.