

CHAPTER 126

Senate Bill 2

AN ACT

RELATING TO JURORS; PRESCRIBING TERMS, APPOINTMENT, NUMBER, POWERS AND DUTIES OF GRAND JURORS; PROVIDING FOR IMMUNITY OF A WITNESS IN A GRAND JURY PROCEEDING; PROVIDING FOR COMPOSITION OF GRAND JURIES; PRESCRIBING PENALTY FOR RECORDING, LISTENING TO, OR DISCLOSING EVIDENCE RECEIVED BY A GRAND JURY; PRESCRIBING PENALTY FOR AN EMPLOYER PENALIZING EMPLOYEES SERVING ON GRAND OR TRIAL JURIES; PRESCRIBING DUTIES OF THE COURT AND PROSECUTING OFFICERS IN RELATION TO GRAND JURIES; PROVIDING FOR CALLING, TERM AND DISCHARGE OF GRAND JURIES; AMENDING SECTIONS 13-1804, 21-101, 21-234, 21-311 AND 21-336.01, ARIZONA REVISED STATUTES; AMENDING TITLE 21, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 21-235 AND 21-236; AMENDING TITLE 21, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 4, ARTICLE 1, AND REPEALING SECTION 13-1531, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-1804, Arizona Revised Statutes, is amended to read:

13-1804. IMMUNITY FROM PROSECUTION; APPLICATION

If a witness in any judicial OR GRAND JURY proceeding claims the privilege against self-incrimination but is required by the court to give testimony or produce evidence, the witness shall not be prosecuted or subjected to any penalty or forfeiture for, or on account

of, any transaction, matter or thing concerning which he testifies or produces evidence. The witness may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order.

Sec. 2. Section 21-101, Arizona Revised Statutes, is amended to read:

21-101. GRAND JURY

A grand jury shall be composed of not less than ~~sixteen~~ TWELVE nor more than ~~twenty-one~~ SIXTEEN persons, ~~twelve~~ NINE of whom shall constitute a quorum for all proceedings before it.

Sec. 3. Sec. 21-234, Arizona Revised Statutes, is amended to read:

21-234. DISCLOSURE OF EVIDENCE, TESTIMONY, OR MANNER OF VOTING; PENALTY

A. A grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury or anything which he or any other grand juror said, or in what manner he or any other grand juror voted on a matter before them, is guilty of a misdemeanor.

B. A GRAND JUROR, COUNTY ATTORNEY, OR OTHER PROSECUTING OFFICER, REPORTER, INTERPRETER, OR OTHER PERSON WHO WILLFULLY DISCLOSES THE TESTIMONY OF A WITNESS EXAMINED BEFORE THE GRAND JURY OR OTHER EVIDENCE RECEIVED BY IT IS GUILTY OF A MISDEMEANOR EXCEPT WHEN REQUIRED BY A COURT TO DISCLOSE THE TESTIMONY OF A WITNESS EXAMINED BEFORE THE GRAND JURY FOR THE PURPOSE OF ASCERTAINING WHETHER IT IS CONSISTENT WITH THAT OF THE WITNESS GIVEN BEFORE THE COURT, OR TO DISCLOSE THE TESTIMONY GIVEN BEFORE THE GRAND JURY BY ANY PERSON UPON A CHARGE AGAINST SUCH PERSON FOR PERJURY IN GIVING HIS TESTIMONY OR UPON TRIAL THEREFORE, OR WHEN PERMITTED BY THE COURT IN THE FURTHERANCE OF JUSTICE.

Sec. 4. Title 21, chapter 2, article 4, Arizona Revised Statutes, is amended by adding sections 21-235 and 21-236, to read:

21-235. RECORDINGS, LISTENING TO, OBSERVING PROCEEDINGS UNLAWFUL; PENALTY

A. A PERSON WHO, BY ANY MEANS WHATSOEVER, RECORDS ALL OR PART OF THE PROCEEDINGS OF ANY GRAND JURY WHILE IT IS IN SESSION OR LISTENS TO OR OBSERVES, OR ATTEMPTS TO RECORD, LISTEN TO OR

OBSERVE, THE PROCEEDINGS OF ANY GRAND JURY OF WHICH HE IS NOT A MEMBER WHILE SUCH JURY IS IN SESSION IS GUILTY OF A MISDEMEANOR.

B. THIS SECTION DOES NOT PROHIBIT:

1. THE PRESCRIBED ACTIVITIES OF THE COURT, THE PROSECUTING OFFICER, A COURT REPORTER DESIGNATED BY THE COURT, OR AN INTERPRETER DESIGNATED BY THE COURT.

2. THE TAKING OF NOTES BY A GRAND JUROR IN CONNECTION WITH AND SOLELY FOR THE PURPOSE OF ASSISTING HIM IN THE PERFORMANCE OF HIS DUTIES AS SUCH JUROR.

3. THE APPEARANCE, FOR THE PURPOSES OF GIVING THE TESTIMONY, OF A WITNESS.

4. THE APPEARANCE, FOR THE PURPOSE OF PRESENTING EVIDENCE WHEN PERMITTED PURSUANT TO SECTION 21-412, OF A PERSON BEING INVESTIGATED AND HIS COUNSEL.

21-236. ABSENCE FROM EMPLOYMENT FOR JURY DUTY; VACATION AND SENIORITY RIGHTS; VIOLATION; PENALTY

A. AN EMPLOYER SHALL NOT REFUSE TO PERMIT AN EMPLOYEE TO TAKE A LEAVE OF ABSENCE FROM EMPLOYMENT FOR THE PURPOSE OF SERVING AS A JUROR. NO EMPLOYER MAY DISMISS OR IN ANY WAY PENALIZE ANY EMPLOYEE BECAUSE HE SERVES AS A GRAND OR TRIAL JUROR, PROVIDED, HOWEVER, THAT AN EMPLOYER SHALL NOT BE REQUIRED TO COMPENSATE AN EMPLOYEE WHEN THE EMPLOYEE IS ABSENT FROM HIS EMPLOYMENT BECAUSE OF HIS JURY SERVICE. ANY ABSENCES FROM EMPLOYMENT SHALL NOT AFFECT VACATION RIGHTS WHICH EMPLOYEES OTHERWISE HAVE.

B. AN EMPLOYEE SHALL NOT LOSE SENIORITY OR PRECEDENCE WHILE ABSENT FROM HIS EMPLOYMENT DUE TO HIS SERVING AS A MEMBER OF A GRAND JURY. UPON RETURN TO EMPLOYMENT THE EMPLOYEE SHALL BE RETURNED TO HIS PREVIOUS POSITION, OR TO A HIGHER POSITION COMMENSURATE WITH HIS ABILITY AND EXPERIENCE AS SENIORITY OR PRECEDENCE WOULD ORDINARILY ENTITLE HIM.

C. A PERSON WHO VIOLATES ANY PROVISION OF SUBSECTIONS A OR B OF THIS SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN THREE HUNDRED DOLLARS FOR EACH OFFENSE, BY IMPRISONMENT NOT TO EXCEED THIRTY DAYS, OR BOTH.

Sec. 5. Section 21-311, Arizona Revised Statutes, is amended to read:

21-311. NUMBER OF NAMES TO BE DRAWN FOR JURY SERVICE

A. During January AND JULY in each year the presiding judge in each county shall make an order directing the jury commissioner to draw from the master jury list the number of names necessary, in the opinion of the presiding judge, to provide a sufficient number of persons for jury service during the ensuing ~~year~~ SIX MONTHS. THOSE QUALIFIED JURORS REMAINING ON THE LIST AT THE END OF THE SIX-MONTH PERIOD SHALL BE RETAINED AND CARRIED OVER ONCE TO THE NEXT SUCCEEDING SIX-MONTH LIST.

B. Within ten days after such order is made, the jury commissioner shall draw from the master jury box or master jury wheel, pursuant to section 21-313 or 21-314, the number of names specified by the court.

C. If the presiding judge of the superior court of any county is at any time of the opinion that additional jurors will be required, he may order the jury commissioner to draw additional names from the master jury list.

Sec. 6. Sec. 21-336.01, Arizona Revised Statutes, is amended to read:

21-336.01 ~~TRIAL~~ JURORS TERM OF SERVICE

The term of service of jurors shall not exceed one hundred twenty days, unless at the end of this period a juror is serving in connection with an unfinished case, INQUIRY OR INVESTIGATION, in which event he shall serve only until the case, INQUIRY OR INVESTIGATION in which he is serving is finished.

Sec. 6. Title 21, Arizona Revised Statutes, is amended by adding chapter 4, article 1, sections 21-401 and 21-416, inclusive, to read:

CHAPTER 4
GRAND JURIES

ARTICLE 1. GENERAL PROVISIONS

21-401. DEFINITIONS

IN THIS CHAPTER UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "GRAND JURY" MEANS A BODY OF THE REQUIRED NUMBER OF QUALIFIED PERSONS, DULY CONVENED AND IMPANELLED BY THE PRESIDING JUDGE OF THE SUPERIOR COURT AND SWORN TO INQUIRE INTO PUBLIC OFFENSES WHICH MAY BE TRIED WITHIN THE COUNTY, INCLUDING CORRUPT OR WILLFUL MISCONDUCT IN OFFICE OF PUBLIC OFFICIALS WITHIN THE COUNTY.

2. "INDICTMENT" MEANS AN ACCUSATORY STATEMENT IN WRITING, PRESENTED BY THE GRAND JURY TO THE SUPERIOR COURT CHARGING THE COMMISSION OF A PUBLIC OFFENSE WHICH MAY BE TRIED WITHIN THE COUNTY.

21-402. CALLING GRAND JURY

A. IN A COUNTY WITH A POPULATION OF TWO HUNDRED THOUSAND OR MORE A GRAND JURY SHALL BE CALLED THREE TIMES EACH YEAR BY THE PRESIDING JUDGE OF THE SUPERIOR COURT. THE CALL SHALL BE ISSUED ON THE FIRST COURT DATE OF EACH YEAR, THE FIRST COURT DATE OF MAY OF EACH YEAR AND THE FIRST COURT DATE OF SEPTEMBER OF EACH YEAR. EACH GRAND JURY SHALL SIT UNTIL A NEW GRAND JURY HAS BEEN IMPANELLED TO REPLACE IT.

B. IN A COUNTY OF UNDER TWO HUNDRED THOUSAND IN POPULATION THE PRESIDING JUDGE OF THE SUPERIOR COURT MAY CALL A GRAND JURY:

1. IF, IN HIS SOLE DISCRETION, HE DETERMINES THE PUBLIC INTEREST REQUIRES A GRAND JURY; OR

2. ON PETITION OF THE COUNTY ATTORNEY.

21-403. TERM OF GRAND JURY

A. GRAND JURIES CALLED PURSUANT TO SECTION 21-402, SUBSECTION B, PARAGRAPH 1 SHALL SERVE FOR A TERM DESIGNATED BY THE PRESIDING JUDGE OF THE SUPERIOR COURT WHICH SHALL NOT EXCEED ONE HUNDRED TWENTY DAYS, UNLESS AT THE END OF SUCH PER-

IOD THE GRAND JURY IS SERVING IN CONNECTION WITH AN UNFINISHED INQUIRY OR INVESTIGATION, IN WHICH EVENT THE TERM MAY BE EXTENDED BY THE PRESIDING JUDGE UNTIL THE CONCLUSION OF THE INVESTIGATION.

B. GRAND JURIES SUMMONED AT THE REQUEST OF THE COUNTY ATTORNEY PURSUANT TO SECTION 21-402, SUBSECTION B, PARAGRAPH 2 SHALL SERVE FOR A TERM OF ONE HUNDRED TWENTY DAYS, UNLESS AT THE END OF SUCH PERIOD THE GRAND JURY IS SERVING IN CONNECTION WITH AN UNFINISHED INQUIRY OR INVESTIGATION, IN WHICH EVENT THE TERM SHALL BE EXTENDED BY THE PRESIDING JUDGE OF THE SUPERIOR COURT UNTIL THE CONCLUSION OF SUCH INQUIRY OR INVESTIGATION.

21-404. DISCHARGE OF GRAND JURY

THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL DISCHARGE A GRAND JURY UPON THE EXPIRATION OF THE TERM OF SUCH GRAND JURY UNLESS THE TERM IS EXTENDED AS PROVIDED IN SECTION 21-403.

21-405. CHANGE IN PRESIDING JUDGE OR COUNTY ATTORNEY; EFFECT

NEITHER THE TERM NOR THE POWERS OF A GRAND JURY SHALL BE AFFECTED BY THE FACT THAT A DIFFERENT INDIVIDUAL OR INDIVIDUALS SHALL OCCUPY THE POSITION OF PRESIDING JUDGE OR THE OFFICE OF COUNTY ATTORNEY FROM TIME TO TIME.

21-406. EXCUSE, VACANCY AND ABSENCE

A. AT ANY TIME, FOR GOOD CAUSE, THE PRESIDING JUDGE OF THE SUPERIOR COURT MAY EXCUSE A GRAND JUROR TEMPORARILY OR PERMANENTLY. IN THE EVENT THAT A GRAND JUROR IS EXCUSED PERMANENTLY, THE PRESIDING JUDGE OF THE SUPERIOR COURT MAY IMPANEL ANOTHER GRAND JUROR SO AS TO MAINTAIN THE ORIGINAL MEMBERSHIP AT THE PRESCRIBED NUMBER OF PERSONS. THE NEW GRAND JUROR SHALL BE SELECTED AS PRESCRIBED BY TITLE 21, CHAPTER 3.

B. NO GRAND JUROR SHALL VOTE ON ANY MATTER UPON WHICH EVIDENCE HAS BEEN TAKEN IN HIS ABSENCE OR PRIOR TO HIS IMPANELMENT.

21-407. DUTIES OF GRAND JURORS

A. THE GRAND JURORS SHALL INQUIRE INTO EVERY OFFENSE WHICH MAY BE TRIED WITHIN THE COUNTY

WHICH IS PRESENTED TO THEM BY THE COUNTY ATTORNEY OR OTHER PROSECUTING OFFICER AT THE REQUEST OF THE COUNTY ATTORNEY, OR BY A SPECIAL PROSECUTOR APPOINTED BY THE PRESIDING JUDGE OF THE SUPERIOR COURT FOR THE PURPOSE OF PROCEEDINGS UNDER SECTION 38-344, AND SHALL HAVE ACCESS TO ALL JAILS, PUBLIC INSTITUTIONS, AND PUBLIC RECORDS.

B. IF A GRAND JUROR KNOWS OF OR HAS REASON TO BELIEVE THAT AN OFFENSE WHICH MAY BE TRIED WITHIN THE COUNTY HAS BEEN COMMITTED HE SHALL REPORT SUCH KNOWLEDGE OR BELIEF TO THE COUNTY ATTORNEY OR TO THE PRESIDING JUDGE OF THE SUPERIOR COURT. IF AN INVESTIGATION OF SUCH ALLEGED OFFENSE IS UNDERTAKEN UNDER A CHARGE TO THE GRAND JURY AS PROVIDED IN SUBSECTION B OF SECTION 21-409, THE GRAND JUROR MAY BE SWORN AS A WITNESS.

21-408. ATTENDANCE OF PROSECUTING ATTORNEY

A. THE COUNTY ATTORNEY OR OTHER PROSECUTING OFFICER SHALL ATTEND THE GRAND JURORS WHEN REQUESTED BY THEM, AND MAY DO SO ALTHOUGH NOT REQUESTED FOR THE PURPOSE OF EXAMINING WITNESSES, IN THEIR PRESENCE, OR OF GIVING THE GRAND JURORS LEGAL ADVICE REGARDING ANY MATTER COGNIZABLE BY THEM. HE SHALL ALSO, WHEN REQUESTED BY THEM, DRAFT INDICTMENTS AND CAUSE PROCESS TO ISSUE FOR THE ATTENDANCE OF WITNESSES AND OTHER EVIDENCE.

B. IF A CHARGE AGAINST OR INVOLVING THE PROSECUTING ATTORNEY, OR AN ASSISTANT PROSECUTING ATTORNEY OR ANY ONE EMPLOYED BY OR CONNECTED WITH THE OFFICE OF THE PROSECUTING ATTORNEY IS BEING INVESTIGATED BY THE GRAND JURY, SUCH PERSON OR PERSONS UNDER INVESTIGATION SHALL NOT BE ALLOWED TO BE PRESENT BEFORE THE GRAND JURY WHEN SUCH CHARGE IS BEING INVESTIGATED OTHER THAN AS A WITNESS. THE PERSON UNDER INVESTIGATION AFTER MAKING AN APPEARANCE AS A WITNESS SHALL LEAVE THE PLACE WHERE THE GRAND JURY IS HOLDING ITS SESSION.

21-409. DUTIES OF COURT; EXAMINATION; CHARGE; ADVICE; APPOINTMENT OF FOREMAN

A. WHEN A GRAND JURY IS SUMMONED AND APPEARS, THE COURT AND THE COUNTY ATTORNEY OR OTHER PROSECUTING OFFICER SHALL EXAMINE THE

JURORS REGARDING THEIR QUALIFICATIONS AS SUCH JURORS.

B. AFTER THE GRAND JURY HAS BEEN SWORN AND IMPANELLED THE COURT ON ADVICE OF THE COUNTY ATTORNEY SHALL CHARGE IT CONCERNING THE MATTERS THAT MAY BE CONSIDERED BY IT AND CONCERNING THE DUTIES OF THE GRAND JURORS IN RESPECT THERETO.

C. ON REQUEST OF THE GRAND JURY, THE COURT SHALL ADVISE THAT BODY AT ALL REASONABLE TIMES REGARDING THEIR LEGAL DUTIES.

D. WHEN THE GRAND JURY IS SWORN AND IMPANELLED, THE COURT SHALL APPOINT ONE OF THE JURORS TO BE FOREMAN, AND ANOTHER JUROR TO ACT AS FOREMAN IN THE ABSENCE OF SUCH FOREMAN.

21-410. SWEARING OF WITNESS

A. THE FOREMAN OR ACTING FOREMAN SHALL ADMINISTER AN OATH OR AFFIRMATION IN THE MANNER PRESCRIBED BY LAW TO ANY WITNESS CALLED TO TESTIFY BEFORE THE GRAND JURY.

21-411. APPOINTMENT OF REPORTER; TRANSCRIPT

A. THE PRESIDING JUDGE OF THE SUPERIOR COURT SHALL APPOINT A REGULARLY APPOINTED COURT REPORTER TO RECORD THE PROCEEDINGS BEFORE THE GRAND JURY, EXCEPT THE DELIBERATIONS THEREOF. THE REPORTER'S NOTES CONTAINING THE PROCEEDINGS FROM WHICH AN INDICTMENT IS RETURNED SHALL BE TRANSCRIBED AND FILED WITH THE CLERK OF THE SUPERIOR COURT NOT LATER THAN THIRTY DAYS FOLLOWING THE RETURN OF SAID INDICTMENT, UNLESS THE COURT OTHERWISE ORDERS. SUCH TRANSCRIPT SHALL BE MADE AVAILABLE TO THE PROSECUTING OFFICER AND THE DEFENDANT. SAID TRANSCRIPT OR A PORTION THEREOF MAY BE DENIED TO A DEFENDANT BY THE COURT UPON A SHOWING OF EXTRAORDINARY CIRCUMSTANCES BY A PROSECUTING OFFICER. THE REPORTER'S NOTES WHICH ARE NOT TRANSCRIBED AS PROVIDED HEREINABOVE SHALL BE FILED WITH THE CLERK OF THE SUPERIOR COURT AND IMPOUNDED AND SHALL BE TRANSCRIBED ONLY WHEN ORDERED BY THE PRESIDING JUDGE OF THE SUPERIOR COURT.

B. THE REPORTER AND TYPISTS WHO TRANSCRIBE THE REPORTER'S NOTES OF GRAND JURY PROCEEDINGS SHALL BE SWORN BY THE FOREMAN OR ACTING FORE-

MAN, NOT TO DISCLOSE ANY TESTIMONY OR THE NAME OF ANY WITNESS EXCEPT TO THE COUNTY ATTORNEY OR OTHER PROSECUTING OFFICER OR WHEN TESTIFYING IN COURT.

21-412. EVIDENCE ON BEHALF OF PERSON UNDER INVESTIGATION

THE GRAND JURORS ARE UNDER NO DUTY TO HEAR EVIDENCE AT THE REQUEST OF THE PERSON UNDER INVESTIGATION, BUT MAY DO SO. THE PERSON UNDER INVESTIGATION SHALL HAVE THE RIGHT TO ADVICE OF COUNSEL DURING THE GIVING OF ANY TESTIMONY BY HIM BEFORE THE GRAND JURY, PROVIDED THAT SUCH COUNSEL MAY NOT COMMUNICATE WITH ANYONE OTHER THAN HIS CLIENT. IF SUCH COUNSEL COMMUNICATES WITH ANYONE OTHER THAN HIS CLIENT HE MAY BE SUMMARILY EXPELLED BY THE COURT FROM THE GRAND JURY CHAMBERS. THE GRAND JURORS SHALL WEIGH ALL THE EVIDENCE RECEIVED BY THEM AND WHEN THEY HAVE REASONABLE GROUND TO BELIEVE THAT OTHER EVIDENCE, WHICH IS AVAILABLE, WILL EXPLAIN AWAY THE CONTEMPLATED CHARGE, THEY MAY REQUIRE THE EVIDENCE TO BE PRODUCED.

21-413. INDICTMENT UPON PROBABLE CAUSE

THE GRAND JURY SHALL RETURN AN INDICTMENT CHARGING THE PERSON UNDER INVESTIGATION WITH THE COMMISSION OF A PUBLIC OFFENSE IF, FROM ALL THE EVIDENCE TAKEN TOGETHER, IT IS CONVINCED THAT THERE IS PROBABLE CAUSE TO BELIEVE THE PERSON UNDER INVESTIGATION IS GUILTY OF SUCH PUBLIC OFFENSE.

21-414. NUMBER OF GRAND JURORS NECESSARY TO INDICT

A. AN INDICTMENT SHALL NOT BE RETURNED WITHOUT CONCURRENCE OF AT LEAST NINE GRAND JURORS. WHEN AN INDICTMENT IS RETURNED, THE FOREMAN OR ACTING FOREMAN SHALL ENDORSE IT A "TRUE BILL" AND SIGN IT.

B. AN INDICTMENT SHALL NOT BE DISMISSED ON THE GROUND THAT ONE OR MORE MEMBERS OF THE GRAND JURY WERE NOT LEGALLY QUALIFIED IF IT APPEARS THAT NINE OR MORE QUALIFIED JURORS CONCURRED IN RETURNING THE INDICTMENT.

21-415. PRESENTATION OF INDICTMENT

THE INDICTMENT SHALL BE PRESENTED BY THE FOREMAN OR ACTING FOREMAN TO THE COURT IN THE PRESENCE OF THE GRAND JURY.

21-416. FAILURE TO INDICT PERSON IN CUSTODY OR ON BAIL

IF THE DEFENDANT IS IN CUSTODY OR HAS GIVEN BAIL ON A CHARGE INVESTIGATED BY THE GRAND JURY AND NINE JURORS DO NOT CONCUR IN FINDING AN INDICTMENT, THE FOREMAN OR ACTING FOREMAN SHALL SO REPORT TO THE COURT IN WRITING FORTHWITH.

Sec. 7. REPEAL

Section 13-1531, Arizona Revised Statutes, is repealed.

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