

CHAPTER 84

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 97-1009

BY REPRESENTATIVES Kaufman, George, Mace, and Nichol;
also SENATORS Perlmutter, J. Johnson, Mutzebaugh, and Rizzuto.

AN ACT

CONCERNING RELEASE OF GRAND JURY REPORTS IN WHICH NO INDICTMENT IS RETURNED.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 2 of article 5 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

16-5-205.5. Grand jury reports. (1) IN ANY CASE IN WHICH A GRAND JURY DOES NOT RETURN AN INDICTMENT, THE GRAND JURY MAY PREPARE OR ASK TO BE PREPARED A REPORT OF ITS FINDINGS IF THE GRAND JURY DETERMINES THAT PREPARATION AND RELEASE OF A REPORT WOULD BE IN THE PUBLIC INTEREST, AS DESCRIBED IN SUBSECTION (5) OF THIS SECTION. THE DETERMINATION TO PREPARE AND RELEASE A REPORT PURSUANT TO THIS SECTION MUST BE MADE BY AN AFFIRMATIVE VOTE OF AT LEAST THE NUMBER OF JURORS THAT WOULD HAVE BEEN REQUIRED TO RETURN AN INDICTMENT. THE REPORT SHALL BE ACCOMPANIED BY CERTIFICATION THAT THE GRAND JURY HAS DETERMINED THAT RELEASE OF THE REPORT IS IN THE PUBLIC INTEREST, AS DESCRIBED IN SUBSECTION (5) OF THIS SECTION.

(2) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IN ANY INSTANCE IN WHICH THE PROSECUTING ATTORNEY CHOOSES TO FILE CHARGES AGAINST THE PERSON OR BUSINESS THAT WAS THE SUBJECT OF THE GRAND JURY INVESTIGATION.

(3) WITHIN TEN DAYS AFTER RECEIVING A REPORT OF THE GRAND JURY PREPARED PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE PROSECUTING ATTORNEY SHALL NOTIFY IN WRITING ALL PERSONS AND BUSINESSES NAMED IN THE GRAND JURY REPORT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

TO GIVE SUCH PERSONS AND BUSINESSES AN OPPORTUNITY TO REVIEW THE GRAND JURY REPORT AND PREPARE A RESPONSE TO BE SUBMITTED TO THE COURT WITH THE GRAND JURY REPORT. SUCH NOTICE SHALL BE BY PERSONAL SERVICE OR BY CERTIFIED MAIL RETURN RECEIPT REQUESTED. ANY RESPONSES SHALL BE SUBMITTED TO THE PROSECUTING ATTORNEY WITHIN TEN DAYS AFTER NOTIFICATION.

(4) UPON COMPLETION OF THE TIME FOR SUBMITTING RESPONSES, THE PROSECUTING ATTORNEY SHALL SUBMIT THE GRAND JURY REPORT TO THE COURT, TOGETHER WITH THE CERTIFICATION OF PUBLIC INTEREST AND ANY RESPONSES THAT MAY HAVE BEEN SUBMITTED. THE COURT SHALL EXAMINE THE REPORT AND MAKE AN ORDER ACCEPTING AND FILING THE REPORT, INCLUDING THE CERTIFICATION AND ANY RESPONSES THAT THE RESPONDENT, BY WRITTEN NOTICE TO THE PROSECUTING ATTORNEY AND THE COURT, HAS AGREED TO RELEASE, AS A PUBLIC RECORD ONLY IF THE COURT IS SATISFIED THAT:

(a) THE GRAND JURY AND THE PROSECUTING ATTORNEY WERE ACTING WITHIN THE STATUTORY JURISDICTION OF SUCH PERSONS IN CONVENING THE GRAND JURY; AND

(b) THE GRAND JURY FOREMAN AND THE PROSECUTING ATTORNEY HAVE VERIFIED ON THE RECORD THAT:

(I) THE CERTIFICATION OF PUBLIC INTEREST BY THE GRAND JURY COMPLIES WITH THE PROVISIONS OF SUBSECTION (5) OF THIS SECTION; AND

(II) THE REPORT IS BASED ON FACTS REVEALED IN THE COURSE OF THE GRAND JURY INVESTIGATION AND IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE; AND

(III) THE REPORT DOES NOT CONTAIN MATERIAL THE SOLE EFFECT OF WHICH IS TO RIDICULE OR ABUSE A PERSON OR BUSINESS OR TO SUBJECT SUCH PERSON OR BUSINESS TO PUBLIC DISGRACE OR EMBARRASSMENT; AND

(IV) THE REPORT DOES NOT CONTAIN MATERIAL THAT IS PERSONAL IN NATURE THAT DOES NOT RELATE TO ANY LAWFUL INQUIRY; AND

(V) NO CONFIDENTIALITY AGREEMENT WILL BE VIOLATED AND THE IDENTITY OF NO CONFIDENTIAL INFORMANT WILL BE DISCLOSED IN MAKING SUCH GRAND JURY REPORT PUBLIC; AND

(VI) THE FILING OF SUCH REPORT AS A PUBLIC RECORD DOES NOT PREJUDICE THE FAIR CONSIDERATION OF A CRIMINAL MATTER.

(5) RELEASE OF A GRAND JURY REPORT PURSUANT TO THIS SECTION MAY BE DEEMED TO BE IN THE PUBLIC INTEREST ONLY IF THE REPORT ADDRESSES ONE OR MORE OF THE FOLLOWING:

(a) ALLEGATIONS OF THE MISUSE OR MISAPPLICATION OF PUBLIC FUNDS;

(b) ALLEGATIONS OF ABUSE OF AUTHORITY BY A PUBLIC SERVANT, AS DEFINED IN SECTION 18-1-901 (3) (o), C.R.S., OR A PEACE OFFICER, AS DEFINED IN SECTION 18-1-901 (3) (l), C.R.S.;

(c) ALLEGATIONS OF MISFEASANCE OR MALFEASANCE WITH REGARD TO A GOVERNMENTAL FUNCTION, AS DEFINED IN SECTION 18-1-901 (3) (j), C.R.S.;

(d) ALLEGATIONS OF COMMISSION OF A CLASS 1, CLASS 2, OR CLASS 3 FELONY.

SECTION 2. 16-5-205 (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

16-5-205. Informations - authority to file - indictments - warrants and summons. (4) ~~The court to which a grand jury report is made in which no "true bill" is found shall examine such report and make an order accepting and filing such report as a public record only if the court is satisfied that the grand jury and the district attorney or attorney general were acting within the statutory jurisdiction of such persons in convening such grand jury and that the court is satisfied of the following:~~

~~(a) That the report is based upon facts revealed in the course of a grand jury investigation and is supported by a preponderance of the evidence; and~~

~~(b) That the report does not contain material the sole effect of which is to ridicule or abuse a person or to subject such person to public disgrace or embarrassment; and~~

~~(c) That the report does not contain material which is personal in nature that does not relate to any lawful inquiry; and~~

~~(d) That the report does not accuse a named or unnamed person directly or by innuendo, imputation, or otherwise of any act that, if true, constitutes an indictable offense unless the report is accompanied by a presentment or an indictment of the person for the offense mentioned in the report; and~~

~~(e) That no confidentiality agreement will be violated and the identity of no confidential informant will be disclosed in making such grand jury report public; and~~

~~(f) That the court finds that the filing of such report as a public record does not prejudice the fair consideration of a criminal matter.~~

SECTION 3. Effective date - applicability. This act shall take effect October 1, 1997, and shall apply to reports submitted by grand juries convened on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 8, 1997