

HOUSE BILL NO. HB0024

Criminal investigations and repeal of grand jury.

Sponsored by: Representative(s) Gingery

A BILL

for

1 AN ACT relating to criminal procedure; providing for
2 subpoena power by prosecutors during investigations;
3 providing for disclosures to witnesses; providing for
4 undisclosed questioning; authorizing the appointment of
5 investigators hired by district attorneys as peace
6 officers; repealing grand jury authority; and providing for
7 an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 7-1-110 is created to read:

12

13 **7-1-110. Investigations; right to subpoena witnesses**
14 **and require production of evidence; contents of subpoena;**
15 **rights of witnesses; questioning before closed court;**
16 **disclosure of information.**

17

1 (a) As used in this section, "prosecutor" means the
2 attorney general, district attorney or county and
3 prosecuting attorney.

4
5 (b) In any matter involving the investigation of a
6 crime, malfeasance in office or any criminal conspiracy the
7 prosecutor may, upon application and approval of the
8 district court and for good cause shown, conduct a criminal
9 investigation. The application and statement of good cause
10 shall state whether or not any other investigative order
11 related to the investigation at issue has been filed in
12 another court.

13
14 (c) Subject to the conditions established in
15 subsection (d) of this section, the prosecutor may:

16
17 (i) Subpoena witnesses;

18
19 (ii) Compel their attendance and testimony under
20 oath to be recorded by a suitable electronic recording
21 device or to be given before any certified court reporter;
22 and

23

1 (iii) Require the production of books, papers,
2 documents, recordings and any other items that constitute
3 evidence or may be relevant to the investigation.

4

5 (d) In conducting an investigation under this
6 section, the prosecutor shall:

7

8 (i) Apply to the district court for each
9 subpoena; and

10

11 (ii) Show that the requested information is
12 reasonably related to the criminal investigation authorized
13 by the court.

14

15 (e) The prosecutor shall state in each subpoena:

16

17 (i) The time and place of the examination;

18

19 (ii) That the subpoena is issued in aid of a
20 criminal investigation; and

21

22 (iii) The right of the person subpoenaed to have
23 counsel present.

24

1 (f) An examination under this section may be
2 conducted anywhere within the jurisdiction of the
3 prosecutor issuing the subpoena.

4

5 (g) A subpoena issued under this section need not
6 disclose the names of possible defendants.

7

8 (h) Witness fees and expenses shall be paid as in a
9 civil action.

10

11 (j) At the beginning of each compelled questioning
12 under this section, the prosecutor shall personally inform
13 each witness:

14

15 (i) Of the general subject matter of the
16 investigation;

17

18 (ii) Of the privilege to, at any time during the
19 proceeding, refuse to answer any question or produce any
20 evidence of a communicative nature that may result in self-
21 incrimination;

22

1 (iii) That any information provided may be used
2 against the witness in a subsequent criminal proceeding;
3 and

4
5 (iv) Of the right to have counsel present.

6
7 (k) If the prosecutor has substantial evidence that
8 the subpoenaed witness has committed a crime that is under
9 investigation, the prosecutor shall:

10

11 (i) Inform the witness in person before
12 questioning of that witness's target status; and

13

14 (ii) Inform the witness of the nature of the
15 charges under consideration against the witness.

16

17 (m) The prosecutor may make written application to
18 any district court showing a reasonable likelihood that
19 publicly releasing information about the identity of a
20 witness or the substance of the evidence resulting from a
21 subpoena or questioning would pose a threat of harm to a
22 person or otherwise impede the investigation. Upon a
23 finding of reasonable likelihood, the court may order the:

24

1 (i) Questioning of a witness be undisclosed;

2

3 (ii) Occurrence of the questioning and other
4 subpoenaing of evidence, the identity of the person
5 subpoenaed, and the substance of the evidence obtained be
6 kept undisclosed; and

7

8 (iii) Record of testimony and other subpoenaed
9 evidence be kept undisclosed unless the court for good
10 cause otherwise orders.

11

12 (n) After application under subsection (m) of this
13 section, the court may by order exclude from any
14 investigative hearing or proceeding any persons except:

15

16 (i) The attorneys representing the state and
17 members of their staffs;

18

19 (ii) Persons who, in the judgment of the
20 attorneys representing the state, are reasonably necessary
21 to assist in the investigative process;

22

23 (iii) The court reporter or operator of the
24 electronic recording device; and

1

2 (iv) The attorney for the witness.

3

4 (o) Nothing in this section shall be construed to
5 prevent attorneys representing the state or members of
6 their staff from disclosing information obtained pursuant
7 to this chapter for the purpose of furthering any official
8 governmental investigation.

9

10 (p) If a nondisclosure order has been granted by the
11 court regarding the questioning or disclosure of evidence
12 by a witness pursuant to subsection (m) of this section,
13 and if the court finds a further restriction on the witness
14 is appropriate, the court may order the witness not to
15 disclose the substance of the witness's testimony or
16 evidence given by the witness to others. Any order to not
17 disclose made under this subsection shall be served with
18 the subpoena. In an appropriate circumstance the court may
19 order that the witness not disclose the existence of the
20 investigation to others. Any order under this subsection
21 shall be based upon a finding by the court that one (1) or
22 more of the following risks exist:

23

1 (i) Disclosure by the witness would cause
2 destruction of evidence;

3

4 (ii) Disclosure by the witness would taint the
5 evidence provided by other witnesses;

6

7 (iii) Disclosure by the witness to a target of
8 the investigation would result in flight or other conduct
9 to avoid prosecution;

10

11 (iv) Disclosure by the witness would damage a
12 person's reputation; or

13

14 (v) Disclosure by the witness would cause a
15 threat of harm to any person.

16

17 (q) If the court imposes an order under subsection
18 (p) of this section authorizing an instruction to a witness
19 not to disclose the substance of testimony or evidence
20 provided and the prosecuting agency proves by a
21 preponderance of the evidence that a witness has violated
22 that order, the court may hold the witness in contempt. An
23 order of nondisclosure imposed on a witness under
24 subsection (p) of this section shall not infringe on the

1 attorney-client relationship between the witness and his
2 attorney or on any other legally recognized privileged
3 relationship.

4

5 (r) The prosecutor may submit to any district court a
6 separate written request that the application, statement of
7 good cause and the court's order authorizing the
8 investigation be kept undisclosed. The request for
9 nondisclosure is a public record under the Wyoming Public
10 Records Act, W.S. 16-4-201 through 16-4-205, but need not
11 contain any information that would compromise any of the
12 interest listed in this subsection. With the court's
13 permission, the prosecutor may submit to the court, in
14 camera, any additional information to support the request
15 for nondisclosure if necessary to avoid compromising the
16 interests listed in this subsection. The court shall
17 consider all information in the application and order
18 authorizing the investigation and any information received
19 in camera and shall order that all information be placed in
20 the public file except information that, if disclosed,
21 would pose:

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23 (i) A substantial risk of harm to a person's
24 safety;

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2 (ii) A clearly unwarranted invasion of or harm
3 to a person's reputation or privacy; or

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5 (iii) A serious impediment to the investigation.

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7 (s) Before granting an order pursuant to subsection
8 (r) of this section keeping documents and other information
9 received undisclosed, the court shall narrow the
10 nondisclosure order as much as reasonably possible in order
11 to preserve the openness of court records while protecting
12 the interests listed in subsection (r) of this section.

13

14 **Section 2.** W.S. 6-1-104(a)(vi)(P) and by creating a
15 new subparagraph (Q) and 7-2-101(a)(iv)(N) and by creating
16 a new subparagraph (O) are amended to read:

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18 **6-1-104. Definitions.**

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20 (a) As used in W.S. 6-1-101 through 6-10-203 unless
21 otherwise defined:

22

23 (vi) "Peace officer" includes the following
24 officers assigned to duty in the state of Wyoming:

1

2 (O) The director and full-time staff
3 instructors of the Wyoming law enforcement academy when
4 duly appointed and acting pursuant to W.S. 9-1-633(b); ~~and~~

5

6 (P) Any superintendent, assistant
7 superintendent or full-time park ranger of any state park
8 or historic site who has qualified pursuant to W.S. 9-1-701
9 through 9-1-707, when acting within the boundaries of the
10 state park or historic site or when responding to a request
11 to assist other peace officers acting within the scope of
12 their official duties in their own jurisdiction; ~~and~~

13

14 (Q) Investigators employed by district
15 attorney offices and qualified pursuant to W.S. 9-1-701
16 through 9-1-707, when engaged in the performance of duties
17 assigned by the district attorney.

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19 **7-2-101. Definitions.**

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21 (a) As used in W.S. 7-2-101 through 7-2-107:

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23 (iv) "Peace officer" means:

24

1 (M) Certified law enforcement officers of
2 an adjoining state while responding to a request for
3 assistance from a peace officer in this state pursuant to
4 the "Law Enforcement Interstate Mutual Aid Act" or other
5 lawful request; ~~and~~

6

7 (N) The director and full-time staff
8 instructors of the Wyoming law enforcement academy when
9 duly appointed and acting pursuant to W.S. 9-1-633(b) ~~;~~ and

10

11 (O) Investigators employed by district
12 attorney offices and qualified pursuant to W.S. 9-1-701
13 through 9-1-707, when engaged in the performance of duties
14 assigned by the district attorney.

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16 **Section 3.** W.S. 7-5-101 through 7-5-104, 7-5-201
17 through 7-5-209 and 7-5-301 through 7-5-309 are repealed.

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19 **Section 4.** This act is effective July 1, 2008.

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(END)