



# Alaska Court System

## New Information About Grand Jury Investigation Process

### **What is a grand jury and what does it do?**

A grand jury is a group of 12-18 citizens who decide whether there is enough evidence to charge a person with a felony crime. The prosecutor presents evidence to the grand jurors and calls witnesses to testify. Neither the defense nor a judge is in the room. However, at the request of the defendant, the grand jury may decide to hear testimony from the defendant. The grand jurors do not determine whether the defendant is guilty or innocent, only whether there is probable cause to charge the defendant with violating a criminal law. If so, they issue a document called an indictment prepared by the prosecutor to charge a defendant with a felony. During the jurors' term, the prosecutor presents multiple cases to the grand jury. The proceedings are secret.

In addition, the Alaska Constitution provides that the grand jury also has the power to investigate and make recommendations concerning the public welfare and safety. Grand jury investigations have been extremely rare. Prior to 2022, grand juries issued only a handful of investigative reports concerning public welfare and safety since statehood in 1959.

### **Who presents cases to the grand jury when it considers criminal charges?**

The prosecutor (Department of Law) presents cases to the grand jury. The prosecutor will identify who the State wants to charge with a crime, describe what the person allegedly did, and explain the statutes the prosecutor believes that the person violated. The prosecutor will present evidence to the grand jurors. The prosecutor will prepare a proposed indictment and act as the grand jury's legal advisor, explaining the applicable law and answering the grand jurors' questions about the law and procedure. Though all grand jury proceedings are secret, all the proceedings—including witness testimony, prosecutor statements, and any statements by or questions of the jurors—must be electronically recorded and may be referred to later in the criminal case.

### **What is the Constitutional right to investigate a matter of public welfare and safety?**

Article 1, section 8 of the Alaska Constitution states, "The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended." The Alaska Constitution gives grand juries the right to investigate and make recommendations concerning the public welfare or safety; it does not provide that a citizen has a right to have a grand jury investigate a matter that the citizen thinks is important. Alaskan citizens have *never* had a constitutional right to bring any issue directly to a grand jury for investigation. The Constitution does not state or imply that a citizen who is unhappy with something has the right to take that issue to a grand jury to investigate. The few grand jury investigations that have occurred in Alaska were all brought to the grand jury by the Department of Law. However, as described below, there is a procedure for a citizen to make a request for the grand jury to investigate matters of public welfare or safety.



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## What are Supreme Court Order (SCO) Nos. [1993](#) and [2000](#)?

In 2022, three citizens in three court locations before three different judges asked for issues to be investigated by a grand jury. There was no process for how citizen requests should be handled. To provide a consistent process, the Alaska Supreme Court, which has rule making authority for grand jury procedures, authorized [SCO No. 1993](#). The order amends Criminal Rule 6.1 and provides procedures for (1) the grand jury to investigate a matter of public welfare and safety, and (2) a citizen or a grand juror to request that the grand jury investigate a matter of public welfare and safety. Prior to that SCO becoming effective in December 2022, there was no established process in place for citizen requests.

Shortly thereafter, the Alaska Supreme Court issued another order, [SCO No. 2000](#), that further amends Criminal Rule 6.1 to remove language that restricted the same grand jury panel investigating a public welfare or safety matter from also issuing an indictment for criminal conduct based on its investigation.

## Did the Supreme Court suspend the grand jury's powers?

No. The Supreme Court order amended Criminal Rule 6.1 to make it clear that the grand jury has authority to investigate matters of public welfare and safety and issue reports. It creates two processes for (1) grand juror requests to investigate, and (2) citizen requests for the grand jury to investigate.

## Do these Grand Jury Orders take away Alaskans' rights?

These orders do not take away any rights. Instead, the orders set out the process: when a citizen believes that a grand jury should investigate a matter, the citizen presents that request to the Department of Law (DOL). Their attorneys decide whether the issue is in fact one of public welfare and safety as the constitution requires, and determines whether or not the request deserves further attention. If there is a conflict of interest with the citizen's request being reviewed by the DOL, the DOL will appoint a neutral prosecutor to handle the matter. The DOL considers whether the facts as presented have merit and would amount to something actionable that potentially violates a law. This is exactly the type of screening decisions that the DOL makes every single day when it considers whether an incident should be pursued before a grand jury to seek a felony indictment.

## Are grand jury investigations supposed to be for citizens to relitigate court case outcomes they do not like?

No. The Constitution provides that to be investigated, a matter must concern the public welfare or safety. For example, systemic issues or an ongoing, recurring issue impacting the general public could be within the scope of a grand jury investigation. But purely private matters such as, for example, an investigation into any individual court case, or an investigation into the DOL's decision not to prosecute a particular incident as a crime, or an investigation into any private dispute between or among citizens that could appropriately be the basis for a civil or other court



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case, are not generally matters of public welfare or safety within the scope a grand jury's investigative authority.

Litigants can use existing procedures to file an appeal or a motion for reconsideration if they are unhappy with their court case outcome because they think a judge made a legal mistake.

## **Why didn't the rule changes in SCO 1993 go through the criminal rules committee before the Supreme Court signed the order?**

The Supreme Court has specific authority to adopt rules of practice and procedure under the Alaska Constitution. The Chief Justice appoints rules committee members, who make recommendations on proposed rules and changes to the Supreme Court for its consideration. The court's typical (but not exclusive) process for changing rules is to refer proposals to a rules committee to review proposed changes. The rules committee process is thoughtful and thorough, and may take many months or even more than a year to consider a proposal before making recommendations to the court.

The Supreme Court adopted SCO 1993 as an expedited rule change to create a consistent process for citizen requests for grand jury investigations, because there were three different requests made in a short amount of time before three different judges. The Court may take expedited action when necessary. The Court simultaneously referred the amended rules to the criminal rules committee for additional review and input. The rules committee is considering whether to recommend that the court adopt any additional or different amendments to Criminal Rules 6 and 6.1. As part of its review, there will be a regular public comment period; as of this writing, the committee process is underway.

## **What happens at the end of a grand jury investigation?**

The grand jury can write a report in which it makes recommendations about the matter it investigated. The grand jury then submits the report to the presiding judge of the judicial district.