

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 11
POWERS AND DUTIES OF GRAND JURY

19-1101. POWERS AND DUTIES IN GENERAL. The grand jury must inquire into all public offenses committed or triable within the county, and present them to the court, either by presentment or by indictment.

[(19-1101) Cr. Prac. 1864, sec. 201, p. 237; R.S., R.C., & C.L., sec. 7630; C.S., sec. 8789; I.C.A., sec. 19-1001.]

19-1102. PRESENTMENT DEFINED. A presentment is a formal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual named or described therein has committed it.

[(19-1102) Cr. Prac. 1864, sec. 203, p. 237; R.S., R.C., & C.L., sec. 7631; C.S., sec. 8790; I.C.A., sec. 19-1002.]

19-1103. INDICTMENT DEFINED. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense.

[(19-1103) Cr. Prac. 1864, sec. 202, p. 237; R.S., R.C., & C.L., sec. 7632; C.S., sec. 8791; I.C.A., sec. 19-1003.]

19-1104. FOREMAN MAY ADMINISTER OATHS. The foreman may administer an oath to any witness appearing before the grand jury.

[(19-1104) Cr. Prac. 1864, sec. 204, p. 237; R.S., R.C., & C.L., sec. 7633; C.S., sec. 8792; I.C.A., sec. 19-1004.]

19-1105. EVIDENCE RECEIVABLE BY GRAND JURY. In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive any evidence that is given by witnesses produced and sworn before them except as hereinafter provided, furnished by legal documentary evidence, the deposition of a witness in the cases provided by this code or legally admissible hearsay. No witness whose testimony has been taken and reduced to writing on a preliminary examination must be subpoenaed or required to appear before the grand jury, until such testimony has been first submitted to and considered by the grand jury, but if such testimony has been lost or cannot be found, or if the grand jury after considering the same still desires the presence of any such witnesses, they may be subpoenaed.

[(19-1105) Cr. Prac. 1864, secs. 205, 206, p. 237; R.S., R.C., & C.L., sec. 7634; C.S., sec. 8793; I.C.A., sec. 19-1005; am. 1989, ch. 49, sec. 1, p. 62.]

19-1106. EVIDENCE FOR DEFENDANT. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence

within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the prosecuting attorney to issue process for the witnesses.

[(19-1106) Cr. Prac. 1864, sec. 207, p. 237; R.S., R.C., & C.L., sec. 7635; C.S., sec. 8794; I.C.A., sec. 19-1006.]

19-1107. SUFFICIENCY OF EVIDENCE TO WARRANT INDICTMENT. The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

[(19-1107) Cr. Prac. 1864, sec. 208, p. 238; R.S., R.C., & C.L., sec. 7636; C.S., sec. 8795; I.C.A., sec. 19-1007.]

19-1108. DUTY OF JUROR HAVING KNOWLEDGE OF OFFENSE. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors, who must thereupon investigate the same.

[(19-1108) Cr. Prac. 1864, sec. 209, p. 238; R.S., R.C., & C.L., sec. 7637; C.S., sec. 8796; I.C.A., sec. 19-1008.]

19-1110. ACCESS TO PRISONS AND PUBLIC RECORDS. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

[(19-1110) Cr. Prac. 1864, sec. 211, p. 238; R.S., R.C., & C.L., sec. 7639; C.S., sec. 8798; I.C.A., sec. 19-1010.]

19-1111. WHO MAY BE PRESENT AT SESSIONS OF JURY. The grand jury may, at all reasonable times, ask the advice of the court, or the judge thereof, or of the prosecuting attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The prosecuting attorney of the county may at all times appear before the grand jury for the purpose of giving them information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he think it necessary, but no other person is permitted to be present during the sessions of the grand jury, except the members and witnesses actually under examination, and an interpreter, when necessary, and no person must be permitted to be present during the expressions of their opinions, or giving their votes upon any matter before them.

[(19-1111) Cr. Prac. 1864, sec. 212, p. 238; R.S., R.C., & C.L., sec. 7640; C.S., sec. 8799; I.C.A., sec. 19-1011.]

19-1112. PROCEEDINGS TO BE SECRET. Every member of the grand jury must keep secret whatever he himself, or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; and such matters shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code, but may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any per-

son, upon a charge against such person for perjury in giving his testimony, or upon trial therefor.

[(19-1112) Cr. Prac. 1864, secs. 213, 214, p. 238; R.S., R.C., & C.L., sec. 7641; C.S., sec. 8800; I.C.A., sec. 19-1012; am. 1990, ch. 213, sec. 13, p. 499; am. 2015, ch. 141, sec. 19, p. 401.]

19-1113. JUROR NOT TO BE QUESTIONED. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

[(19-1113) Cr. Prac. 1864, sec. 215, p. 238; R.S., R.C., & C.L., sec. 7642; C.S., sec. 8801; I.C.A., sec. 19-1013.]

19-1114. NOTICE OF REFUSAL TO GIVE INCRIMINATING EVIDENCE -- AGREEMENT TO TESTIFY WITH IMMUNITY -- PERJURY -- COMPELLING ANSWER. In any criminal proceeding or in any investigation or proceeding before a grand jury in connection with any criminal offense, if a person has advised the prosecuting attorney that he will refuse to answer a question or produce evidence, if called as a witness, on the ground that he may be incriminated thereby, the person may agree in writing with the prosecuting attorney of the county to testify voluntarily pursuant to this section. Upon written request of such prosecuting attorney being made to the district court in and for that county, said district court shall approve such written agreement, unless the court finds that to do so would be clearly contrary to the public interest. If after court approval of such agreement, and if, but for this section, the person would have been privileged to withhold the answer given or the evidence produced by him, the answer given, or evidence produced, and any information directly or indirectly derived from the answer or evidence, may not be used against the person in any manner in a criminal case but the person may, nevertheless, be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering or in producing evidence in accordance with such agreement. If such person fails to give any answer or to produce any evidence in accordance with such agreement, that person shall be prosecuted or subjected to penalty or forfeiture in the same manner and to the same extent as he would be prosecuted or subjected to penalty or forfeiture but for this section: provided, that if such person fails to give any answer or to produce any evidence in accordance with such agreement, the prosecuting attorney may request the district court to compel the person to answer or produce evidence, in accordance with section [19-1115](#), Idaho Code.

[19-1114, added 1970, ch. 60, sec. 1, p. 146; am. 2000, ch. 238, sec. 1, p. 668.]

19-1115. REFUSAL TO GIVE INCRIMINATING EVIDENCE -- COMPELLING TO ANSWER OR PRODUCE EVIDENCE -- IMMUNITY -- PERJURY. In any criminal proceeding or in any investigation or proceeding before a grand jury in connection with any criminal offense, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and if the prosecuting attorney of the county in writing requests the district court in and for that county to order that person to answer the question

or produce the evidence, a judge of the district court shall set a time for hearing and order the person to appear before the court and show cause, if any, why the question should not be answered or the evidence produced, and the court shall order the question answered or the evidence produced unless it finds that to do so would be clearly contrary to the public interest, or could subject the witness to a criminal prosecution in another jurisdiction, and that person shall comply with the order. After complying, and if, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, the answer given, or evidence produced, and any information directly or indirectly derived from the answer or evidence, may not be used against the compelled person in any manner in a criminal case, except that he 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.

[19-1115, added 1970, ch. 60, sec. 2, p. 146; am. 2000, ch. 238, sec. 2, p. 669.]

19-1116. SPECIAL INQUIRY JUDGE. Upon the petition by affidavit of a prosecuting attorney of any county of the state of Idaho for the appointment of a special inquiry judge to conduct an inquiry into the existence of suspected crime or corruption within his jurisdiction, the administrative district court judge of the judicial district wherein the county is situated, may designate a judge from the magistrate division of the district court to preside over said inquiry.

[19-1116, added 1980, ch. 251, sec. 1, p. 661.]

19-1117. SPECIAL INQUIRY JUDGE -- PETITION FOR ORDER. (1) When the prosecuting attorney of any county has reason to suspect crime or corruption, within his jurisdiction, and there is reason to suspect that there are persons who may be able to give material testimony or provide material evidence concerning such suspected crime or corruption, such attorney may issue subpoenas directed to such persons commanding them to appear at a designated time and place in said county before the special inquiry judge and to then and there answer such questions under oath concerning the suspected crime or corruption as may be asked by the prosecuting attorney or special inquiry judge.

(2) At any time after service of such subpoenas and before the return date thereof, the prosecuting attorney may apply to the special inquiry judge for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the court may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(3) The proceedings to summon a person and compel him to testify or provide evidence shall as far as possible be the same as proceedings to summon witnesses and compel their attendance. Such persons shall receive only those fees paid witnesses in district court criminal trials.

[19-1117, added 1980, ch. 251, sec. 2, p. 661.]

19-1118. SPECIAL INQUIRY JUDGE -- DISQUALIFICATION FROM SUBSEQUENT PROCEEDINGS. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify or provide evidence at such inquiry in response to an order, summons or subpoena.

[19-1118, added 1980, ch. 251, sec. 3, p. 662.]

19-1119. SPECIAL INQUIRY JUDGE -- DIRECTION TO PROSECUTING ATTORNEY TO PARTICIPATE IN PROCEEDINGS IN ANOTHER COUNTY -- PROCEDURE. Upon petition of a prosecuting attorney to the special inquiry judge that there is reason to suspect that there exists evidence of crime and corruption in another county, and with the concurrence of the special inquiry judge and prosecuting attorney of the other county, the special inquiry judge shall direct the prosecuting attorney of the initiating county to attend and participate in special inquiry judge proceedings in the other county held to inquire into crime and corruption which relates to crime or corruption under investigation in the initiating county. The proceedings of such special inquiry judge may be transcribed, certified and filed in the county of the initiating prosecuting attorney's jurisdiction at the expense of that county.

[19-1119, added 1980, ch. 251, sec. 4, p. 662.]

19-1120. WITNESSES -- ATTENDANCE. (1) A prosecuting attorney may call as a witness, in a special inquiry judge proceeding, any person suspected by him to possess information or knowledge relevant thereto and may issue legal process and subpoena to compel his attendance and the production of evidence.

(2) The special inquiry judge may cause to be called as a witness any person suspected by him to possess relevant information or knowledge. If the special inquiry judge desires to hear any such witness who was not called by a prosecuting attorney, it may direct the prosecuting attorney to issue and serve a subpoena upon such witness and the prosecuting attorney must comply with such direction.

[19-1120, added 1980, ch. 251, sec. 5, p. 662.]

19-1121. SELF-INCRIMINATION -- RIGHT TO COUNSEL. Any individual called to testify before a special inquiry judge, whether as a witness or principal, if not represented by an attorney appearing with the witness before the special inquiry judge, must be told of his privilege against self-incrimination. Such an individual must be informed that he has the right to have an attorney present to advise him as to his rights, obligations and duties before the special inquiry judge. Such attorney may be present as an observer and advisor during all proceedings, unless immunity has been granted pursuant to sections [19-1114](#), [19-1115](#) or [19-1122](#), Idaho Code. After immunity has been granted, such an individual may leave the special inquiry room to confer with his attorney.

[19-1121, added 1980, ch. 251, sec. 6, p. 663.]

19-1122. SELF-INCRIMINATION -- REFUSAL TO TESTIFY OR GIVE EVIDENCE -- PROCEDURE. If in any proceedings before a special inquiry judge, a person re-

fuses, or indicates in advance a refusal, to testify or provide evidence of any other kind on the ground that he may be incriminated thereby, and if a prosecuting attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order.

If, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but none of the testimony nor evidence presented by the witness relative to the issue under investigation before the special inquiry judge, nor any information directly or indirectly derived from his testimony, can be used against him in any further criminal proceeding. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the special inquiry judge.

[19-1122, added 1980, ch. 251, sec. 7, p. 663.]

19-1123. SECRECY ENJOINED -- EXCEPTIONS -- USE AND AVAILABILITY OF EVIDENCE. (1) No individual, who is present during a special inquiry judge proceeding or who shall gain information with regard to said inquiry, shall disclose the testimony of a witness examined before the special inquiry judge or other evidence received by him, except such testimony or evidence may be disclosed in the following cases: when the district court requires disclosure of such testimony to determine whether it is consistent with testimony given by the witness before district court; by a prosecuting attorney when communicating with any law enforcement officer; upon a charge against the witness for perjury in giving his testimony in the special inquiry judge proceeding or upon trial therefor; or when permitted by the district court in the furtherance of justice.

(2) The prosecuting attorney shall have access to all special inquiry judge evidence and may introduce such evidence before any grand jury or judicial proceeding in which the same may be relevant.

(3) Any witness testimony, given before a special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the district court. The district court may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence when given or presented before a special inquiry judge, if the court finds that doing so is necessary to prevent an injustice and that there is no reason to believe that doing so would endanger the life or safety of any witness or his family. The cost of any such transcript made available shall be borne by the applicant.

[19-1123, added 1980, ch. 251, sec. 8, p. 663.]