

105TH CONGRESS
2D SESSION

S. 2289

To amend the Federal Rules of Criminal Procedure, relating to grand jury proceedings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 10, 1998

Mr. BUMPERS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Federal Rules of Criminal Procedure, relating to grand jury proceedings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Grand Jury Reform
5 Act of 1998”.

6 **SEC. 2. GRAND JURIES.**

7 (a) IN GENERAL.—Rule 6 of the Federal Rules of
8 Criminal Procedure is amended—

9 (1) in subdivision (a), by adding at the end the
10 following:

1 “(3) INSTRUCTION ON RIGHTS, RESPONSIBIL-
2 ITIES, AND DUTIES.—Upon impaneling a grand jury,
3 the court shall instruct and charge the grand jury
4 on the rights, responsibilities, and duties of the
5 grand jury under this rule, including—

6 “(A) the duty to inquire into criminal of-
7 fenses that are alleged to have been committed
8 within the jurisdiction;

9 “(B) the right to call and interrogate wit-
10 nesses;

11 “(C) the right to request production of a
12 book, paper, document, or other object, includ-
13 ing exculpatory evidence;

14 “(D) the necessity of finding credible evi-
15 dence of each material element of the crime
16 charged before returning a true bill;

17 “(E) the right to request that the attorney
18 for the government draft indictments for
19 charges other than those originally requested by
20 that attorney;

21 “(F) the obligation of secrecy under sub-
22 division (e)(2); and

23 “(G) such other rights, responsibilities,
24 and duties as the court determines to be appro-
25 priate.”;

1 (2) in subdivision (d), by inserting “and counsel
2 for that witness (as provided in subdivision (i))”
3 after “under examination”;

4 (3) in subdivision (e)(2), by adding at the end
5 the following: “The court shall have the authority to
6 investigate any violation of this paragraph, including
7 the authority to appoint counsel to investigate and
8 report to the court regarding any such violation.”;
9 and

10 (4) by adding at the end the following:

11 “(h) NOTICE TO WITNESSES.—Upon service of any
12 subpoena requiring any witness to testify or produce infor-
13 mation at any proceeding before a grand jury impaneled
14 before a district court, the witness shall be given adequate
15 and reasonable notice of—

16 “(1) his or her right to counsel, as provided in
17 subdivision (i);

18 “(2) his or her privilege against self-incrimina-
19 tion;

20 “(3) the subject matter of the grand jury inves-
21 tigation;

22 “(4) whether his or her own conduct is under
23 investigation by the grand jury;

24 “(5) the criminal statute, the violation of which
25 is under consideration by the grand jury, if such

1 statute is known at the time of issuance of the sub-
2 poena;

3 “(6) his or her rights regarding immunity; and

4 “(7) any other rights and privileges which the
5 court deems necessary or appropriate.

6 “(i) COUNSEL FOR GRAND JURY WITNESSES.—

7 “(1) IN GENERAL.—

8 “(A) RIGHT OF ASSISTANCE.—Each wit-
9 ness subpoenaed to appear and testify before a
10 grand jury in a district court, or to produce
11 books, papers, documents, or other objects be-
12 fore that grand jury, shall be allowed the assist-
13 ance of counsel during such time as the witness
14 is questioned in the grand jury room.

15 “(B) RETENTION OR APPOINTMENT.—
16 Counsel for a witness described in subpara-
17 graph (A)—

18 “(i) may be retained by the witness;

19 or

20 “(ii) in the case of a witness who is
21 determined by the court to be financially
22 unable to obtain counsel, shall be ap-
23 pointed as provided in section 3006A of
24 title 18, United States Code.

1 “(2) POWERS AND DUTIES OF COUNSEL.—A
2 counsel retained by or appointed for a witness under
3 paragraph (1)—

4 “(A) shall be allowed to be present in the
5 grand jury room only during the questioning of
6 the witness and only to advise the witness; and

7 “(B) shall not be permitted to address any
8 grand juror, or otherwise participate in the pro-
9 ceedings before the grand jury.

10 “(3) POWERS OF THE COURT.—

11 “(A) IN GENERAL.—If the court deter-
12 mines that counsel retained by or appointed for
13 a witness under this subdivision has violated
14 paragraph (2), or that such action is necessary
15 to ensure that the activities of the grand jury
16 are not unduly delayed or impeded, the court
17 may remove the counsel and either appoint new
18 counsel or order the witness to obtain new
19 counsel.

20 “(B) NO EFFECT ON OTHER SANCTIONS.—
21 Nothing in this paragraph shall be construed to
22 affect the contempt powers of the court or the
23 power of the court to impose other appropriate
24 sanctions.

1 “(j) EXCULPATORY EVIDENCE.—An attorney for the
 2 government shall disclose to the grand jury any substan-
 3 tial evidence of which that attorney has knowledge that
 4 directly negates the guilt of the accused. Failure to dis-
 5 close such evidence may be the basis for a motion to dis-
 6 miss the indictment, if the court determines that the evi-
 7 dence might reasonably be expected to lead the grand jury
 8 not to indict.

9 “(k) AVAILABILITY OF GRAND JURY TRANSCRIPTS
 10 AND OTHER STATEMENTS.—

11 “(1) IN GENERAL.—Subject to paragraph (2),
 12 not later than 10 days before trial (unless the court
 13 shall for good cause determine otherwise), and after
 14 the return of an indictment or the filing of any in-
 15 formation, a defendant shall, upon request, and as
 16 the court determines to be reasonable, be entitled to
 17 examine and duplicate a transcript or electronic re-
 18 cording of—

19 “(A) the grand jury testimony of all wit-
 20 nesses to be called at trial;

21 “(B) all statements relating to the defend-
 22 ant’s case made to the grand jury by the court,
 23 the attorney for the government, or a special
 24 attorney;

1 “(C) all grand jury testimony or evidence
2 which in any manner could be considered excul-
3 patory; and

4 “(D) all other grand jury testimony or evi-
5 dence that is determined by the court to be ma-
6 terial to the defense.

7 “(2) EXCEPTION.—The court may refuse to
8 allow a defendant to examine and duplicate a tran-
9 script or electronic recording of any testimony, state-
10 ment, or evidence described in paragraph (1), if the
11 court determines that such examination or duplica-
12 tion would endanger any witness.”.

13 (b) CONFORMING AMENDMENTS.—Section 3500(e)
14 of title 18, United States Code, is amended—

15 (1) in paragraph (1), by adding “or” at the
16 end;

17 (2) in paragraph (2), by striking “, or” and in-
18 serting a period; and

19 (3) by striking paragraph (3).

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