

ACT 209

H.B. NO. 2059-80

A Bill for an Act Relating to Grand Jury.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. **Purpose.** The purpose of this bill is to implement Article I, Section 11, of the Constitution of the State of Hawaii as proposed by the Hawaii Constitutional Convention of 1978 and ratified by the voters on November 7, 1978, which pertains to the grand jury counsel and grand jury proceedings.

SECTION 2. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

**“Sec. 612- Grand jury counsel; appointment and removal.** The chief justice of the state supreme court shall appoint one or more grand jury counsel for the four judicial circuits of the State, without regard to chapters 76, 77, and 89. Right to removal shall rest with the chief justice.”

SECTION 3. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

**“Sec. 612- Grand jury counsel; qualifications.** The grand jury counsel shall be licensed to practice law before the supreme court of the State, and shall not be a public employee.”

SECTION 4. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

**“Sec. 612- Grand jury counsel; length of term; extension of term; limitation on reappointment.** (a) Grand jury counsel shall serve for a term of one year following appointment.

(b) The term of a grand jury counsel may be extended when the matters for which the counsel was called to service cannot be completed before the end of the counsel’s term. The extension shall be authorized by the chief justice where completion of such matters would be substantially extended or hindered by the assignment of another counsel.

(c) In no case shall grand jury counsel be reappointed to serve consecutive terms.

(d) The term of the grand jury counsel whenever practicable shall be such that it will not be co-terminous with the term of the grand jury.”

SECTION 5. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“Sec. 612- Grand jury counsel; call to duty.** Grand jury counsel shall be subject to call by the appointing authority during the counsel’s term of office. Such a call for service shall include an estimate of the number of hours or days, or other reasonable approximation of the time that the grand jury shall desire counsel’s services. No later than twenty-four hours after a call to service, the grand jury counsel shall notify the appointing authority whether or not the call for service is accepted.”

SECTION 6. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“Sec. 612- Grand jury counsel; compensation.** The grand jury counsel shall be compensated on a daily basis at the same rate as per diem judges of the district court.”

SECTION 7. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“Sec. 612- Grand jury counsel; disqualification.** (a) Grand jury counsel shall disqualify himself in any matter in which circumstances render substantial question upon the counsel’s impartiality or which would jeopardize public confidence in the grand jury.

(b) The prosecutor may petition the court for disqualification of the grand jury counsel for cause. Upon a hearing, the court shall issue an appropriate order permitting or denying such petition.”

SECTION 8. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“Sec. 612- Grand jury counsel; duties.** The grand jury counsel shall serve as independent legal counsel to the grand jury, to be at the disposal of the grand jury during its proceedings in obtaining appropriate advice on matters of law after the grand jury has been sworn and charged by the court under section 612-16(d) and during the court’s absence. The grand jury counsel may be present during grand jury proceedings but shall not participate in the questioning of the witnesses or the prosecution. The grand jury counsel’s function shall be to receive inquiries on matters of law sought by the grand jury, conduct legal research, and provide appropriate answers.”

SECTION 9. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“Sec. 612- Grand jury proceedings.** (a) Each grand jury proceeding conducted under the authority of the State shall be provided with a grand jury counsel.

(b) The deliberation and the voting of the grand jury shall be private; provided that the grand jury may interrupt its deliberation or voting in order to call in the grand jury counsel for the purpose of making specific inquiries of counsel or may transmit written inquiries to counsel from the privacy of its deliberation or voting, but all such inquiries shall be restricted to matters of law.

(c) All inquiries made by the grand jury of the grand jury counsel and all exchanges between them shall be recorded verbatim and made part of the record of the grand jury proceedings.”

SECTION 10. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“Sec. 612- Dismissal of indictment.** Any indictment which is based upon a grand jury proceeding in which a violation of section , section , or section has occurred may be subject to dismissal without prejudice by an appropriate state court in the exercise of its discretion. Motion for such dismissal may be made by either party or the court.”

SECTION 11. Section 103-3, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 103-3 Employment of attorneys.** No department of the State other than the attorney general, shall make any expenditure of public funds for the employment or retention by contract or otherwise of any attorney for the purpose of representing the State or such department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply:

- (1) To the Hawaii housing authority or the public utilities commission;
- (2) To any court or judicial or legislative officer of the State;
- (3) To the legislative reference bureau;
- (4) To such compilation commission as may be constituted from time to time;
- (5) To the real estate commission in any action involving the real estate recovery fund;
- (6) To the Hawaii crime commission;
- (7) To grand jury counsel;

(8) In the event the attorney general, for reasons deemed by him good and sufficient, declines such representation or counsel, or approves such department's expenditures; provided the governor thereupon waives the provision of this section.

For the purpose of this section the term "department of the State" means any department, board, commission, agency, bureau, or officer of the State.

Every attorney employed by any department on a full-time basis, except an attorney employed by the Hawaii crime commission or as a grand jury counsel, shall become a deputy attorney general."

SECTION 12. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 13. This Act shall take effect upon its approval.

(Approved June 6, 1980.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.