



FIFTY STATES AND D.C. SURVEY OF LAWS THAT AUTHORIZE OR RECOGNIZE PRIVATE CITIZEN-INITIATED INVESTIGATION AND/OR PROSECUTION OF CRIMINAL OFFENSES

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Scope of Survey

When law enforcement or a prosecutor declines to investigate or prosecute a criminal offense, some jurisdictions provide crime victims and other private citizens alternative avenues for initiating a criminal case. This Survey does not address all of them. The Survey includes citations to authorities that expressly authorize or recognize certain private citizen-initiated actions.

This Survey does not include citations to authorities that may be interpreted to impliedly authorize citizen-initiated actions, or those that expressly prohibit such actions. The Survey also does not include citations to authorities that may permit private citizen-initiated actions if such actions require the consent or referral by local law enforcement or the prosecution, or a showing of prosecutorial misconduct. Thus, this Survey excludes authorities whereby a private citizen may, with the prosecutor's agreement, retain a private attorney to assist the prosecution. *See, e.g., Cantrell v. Com.*, 229 Va. 387, 393, 329 S.E.2d 22, 26 (1985) (explaining that Virginia recognizes "[t]he common-law right of a crime victim, or of his family, to assist with the prosecution with privately employed counsel" but observing the private prosecutor's role is "limited" and "the public prosecutor must remain in continuous control of the case"). Finally, this Survey does not address other avenues for relief that may exist, including laws that permit a court to review the prosecutor's refusal to prosecute and provide relief in the forms of (1) the appointment of a special prosecutor or (2) an order directing the prosecutor to prosecute the case. *See, e.g., Ala. Code* § 12-17-186(a) (authorizing the court, "when the district attorney refuses to act," to "appoint a competent attorney to act" in his or her place); *Colo. Rev. Stat. Ann* § 16-5-209 (providing that "upon affidavit filed . . . alleging the commission of a crime and the unjustified refusal of the prosecutor to prosecute any person for the crime," the court may require the prosecutor to explain the refusal to prosecute, and it may or order the prosecutor to prosecute the case or appoint a special prosecutor if it finds "that the refusal . . . was arbitrary or capricious and without reasonable excuse"); *Utah Const.*, art. VIII, § 16 (providing that "[i]f a public prosecutor fails or refuses to prosecute, the Supreme Court shall have power to appoint a prosecutor pro tempore"). For additional research or other assistance, please contact NCVLI via the technical assistance request form available on NCVLI's website (www.ncvli.org).

JURISDICTION	Private Citizen May Directly Access the Grand Jury or Petition for Court Approval for Access to the Grand Jury	Private Citizen May Initiate Action by Filing an Affidavit, a Complaint, or an Application for a Criminal Complaint
Alabama	<i>King v. Second Nat'l Bank & Trust Co.</i> , 173 So. 498, 499-500 (Ala. 1937) (affirming a defense judgment in a malicious prosecution action that arose after the plaintiff was acquitted in a criminal case initiated by private citizens; and observing that “[p]ublic policy demands that the citizen, without hazard to himself, may freely bring before the grand jury the fact that a crime has been committed, request an investigation, and furnish such information as he has in aid of the investigation”).	
Alaska		
Arizona		Ariz. R. Crim. P. 2.4 (providing that a criminal proceeding may commence by two avenues: (1) “a complaint is made upon oath before a magistrate” and the magistrate finds that “probable cause to believe” that defendant committed an offense; or (2) “a complaint is signed by a prosecutor”)
Arkansas		
California		
Colorado	Colo. Rev. Stat. Ann. § 16-5-204(4)(1) (“Any person may approach the prosecuting attorney or the grand jury and request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. . . . If the person making such request is dissatisfied with the decision of the prosecuting attorney or the grand jury, such person may petition the court for hearing on the denial by the prosecuting attorney or the grand jury. If the court grants the hearing, then the court may permit the person to testify or appear before the grand jury, if the court finds that such testimony or appearance would serve the interests of justice.”).	
Connecticut		
Delaware		
District of Columbia		

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Florida		
Georgia		
Hawaii		
Idaho		<p>Idaho Code Ann. § 19-504 (“When a complaint . . . alleging facts constituting the commission of a public offense,” and the magistrate so finds, “the magistrate shall order the clerk of the court to file the complaint and refer the complaint to the appropriate county or city prosecuting attorney for further action”).</p> <p><i>State v. Murphy</i>, 99 Idaho 511, 516, 584 P.2d 1236, 1241 (1978) (finding that “Idaho’s law provides that a warrant for arrest may be issued upon a complaint filed upon information by a private citizen if the magistrate, after investigation, is satisfied that the offense has been committed”); <i>Searcy v. Ada Cnty.</i>, No. 34216, 2008 WL 9468621, at *7 (Idaho Ct. App. Aug. 11, 2008) (finding that “Section 19–504 does not provide . . . that all persons have a legally enforceable right to bring criminal charges before a magistrate and demand a probable cause determination or prosecution of the charges”; and explaining that “[i]f a magistrate orders a criminal complaint lodged by a citizen to be filed, the statute only requires that the complaint be referred to the prosecutor <i>for further action</i>[;] . . . [it] does not affect the prosecutor’s discretion once the complaint is referred to him or her”) (Emphasis in the original).</p>
Illinois	<p><i>People v. Sears</i>, 49 Ill. 2d 14, 31, 273 N.E.2d 380, 389 (1971) (observing that an Illinois grand jury may not initiate investigation on its own and “the proper channel for presenting information to the grand jury is the State’s Attorney”; but finding that the trial court has jurisdiction “to direct that witnesses be subpoenaed to appear before a grand jury” when a prosecutor’s failure to take action “will effect a deprivation of due process or result in a miscarriage of justice”).</p>	

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Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana	<p>La. Code Crim. Proc. Ann. art. 437 (“The grand jury . . . shall inquire into all capital offenses” and all “other offenses triable by the district court of the parish, and shall inquire into such offenses when requested to do so by the district attorney or ordered to do so by the court.”).</p> <p><i>State v. Sullivan</i>, 159 La. 589, 596, 105 So. 631, 633 (1925) (affirming the trial court’s denial of defendant’s motion to quash the indictment; finding it was proper for private citizens to request permission to see members of the grand jury to request an investigation of the crime; and explaining that “[a]ny person has a right to go before the grand jury and prefer a charge against another”).</p>	
Maine	<p>Me. Rev. Stat. Ann. tit. 15, §1256 (“Evidence may be offered to the grand jury by the Attorney General, the district attorney, the assistant district attorney and, at the discretion of the presiding justice, by such other persons as said presiding justice may permit.”).</p>	
Maryland	<p><i>Brack v. Wells</i>, 184 Md. 86, 91-92, 97, 40 A.2d 319, 323-24 (Md. 1944) (affirming the denial of a petition for writ of mandamus by a private citizen seeking an order to compel the prosecutor to present a case to the grand jury on several grounds, including the fact that the law affords the petitioner another adequate remedy—“that of personally presenting his case to the grand jury”; explaining that the grand jury’s “broad inquisitorial powers” permit it to “investigate a case which the State’s Attorney, in his discretion, has decided not to present to that body”; and stating that the citizen should first exhaust other remedies—<i>e.g.</i>, seek relief from a</p>	

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	magistrate—before asking the grand jury for permission to present his/her case).	
Massachusetts		<p>Mass. Gen. Laws Ann. 218 § 35A (“If a complaint is received by a district court, or by a justice, associate justice or special justice thereof, or by a clerk . . . , the person against whom such complaint is made, if not under arrest . . . , shall, in the case of a complaint for a misdemeanor or a complaint for a felony received from a law enforcement officer who so requests, . . . be given an opportunity to be heard personally or by counsel The court, or said officer thereof, may upon consideration of the evidence, obtained by hearing or otherwise, cause process to be issued unless there is no probable cause[.]”).</p> <p><i>Bradford v. Knights</i>, 427 Mass. 748, 751, 695 N.E.2d 1068, 1071 (1998) (recognizing that Massachusetts General Laws chapter 218, section 35A, “allow[s] private parties to seek criminal complaints in the case of misdemeanors”; observing that private citizens have no right to appellate review of the denial of applications for criminal complaints; but concluding that the trial court has inherent authority to exercise its discretion to rehear and reconsider denials of applications for criminal complaints); <i>Victory Distributors, Inc. v. Ayer Div. of Dist. Court Dep’t</i>, 435 Mass. 136, 755 N.E.2d 273 (2001) (finding that Massachusetts General Laws chapter 218, section 35A, gives private citizens a right to file an application for the issuance of a criminal complaint for misdemeanor offenses and a right to have the court or the clerk-magistrate act on the application, but no right to the <i>issuance</i> of a criminal complaint, even if supported by probable cause, and no right to appeal the court or clerk-magistrate’s decision, even if the decision is legally erroneous).</p>
Michigan		
Minnesota	<i>State ex rel. Wild v. Otis</i> , 257 N.W.2d 361, 364-65 (Minn. 1977) (observing that while a private citizen “does not have a right to appear before the grand jury, he is free to attempt to get the grand jury to take action, and under [the rules of	

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	criminal procedure] the grand jury can permit an aggrieved citizen to appear as a witness for this purpose” in cases where the prosecutor refuses to commence a prosecution).	
Mississippi		
Missouri		
Montana		
Nebraska	<p>Neb. Rev. Stat. §29-1410.01 (“Any person may approach the prosecuting attorney or the grand jury and request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. . . . If the person making such request is dissatisfied with the decision of the prosecuting attorney or the grand jury, such person may petition the court for hearing on the denial by the prosecuting attorney or the grand jury. If the court grants the hearing, then the court may permit the person to testify or appear before the grand jury if the court finds that such testimony or appearance would serve the interests of justice.”).</p> <p>Neb. Rev. Stat. § 29-1401(2) (authorizing district courts to call and summon a grand jury “as the district court may deem necessary”), (3) (requiring district courts to convene a grand jury upon a petition signed by “not less than ten percent of the registered voters of the county who cast votes for the office of Governor” in the last gubernatorial election).</p>	
Nevada		
New Hampshire		<p><i>State v. Martineau</i>, 148 N.H. 259, 260, 808 A.2d 51, 52 (2002) (finding that New Hampshire continues to recognize the common law practice of allowing private citizens to initiate and prosecute private citizen’s criminal complaints only for offenses that are not punishable by imprisonment; and concluding that the private citizen is barred from prosecuting her criminal complaint charging defendant with a class A misdemeanor on the ground that it is punishable by imprisonment up to one year).</p>

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New Jersey		
New Mexico	N.M. Const. Art. 2, § 14 (“A grand jury shall be convened upon order of a judge of a court empowered to try and determine [certain] cases . . . at such times as to him shall be deemed necessary, or a grand jury shall be ordered to convene by such judge upon the filing of a petition therefor signed by not less than the greater of two hundred registered voters or two percent of the registered voters of the county, or a grand jury may be convened in any additional manner as may be prescribed by law.”).	
New York		
North Carolina	<p>N.C. Gen. Stat. Ann. §15A-626(d) (“Any person not called as a witness who desires to testify before the grand jury concerning a criminal matter which may properly be considered by the grand jury must apply to the district attorney or to a superior court judge. The judge or the district attorney in his discretion may call the witness to appear before the grand jury.”)</p> <p>N.C. Gen. Stat. Ann. § 15A-628(a)(4) (“A grand jury: . . . [m]ay investigate any offense as to which no bill of indictment has been submitted to it by the prosecutor and issue a presentment accusing a named person or named persons with one or more criminal offenses if it has found probable cause for the charges made. An investigation may be initiated upon the concurrence of 12 members of the grand jury itself or upon the request of the presiding or convening judge or the prosecutor.”).</p>	
North Dakota		
Ohio		Ohio Rev. Code Ann. § 2935.09(D) (“A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the

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		<p>prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record . . .”).</p> <p>Ohio Rev. Code Ann. § 2935.09(A) (“As used in this section, ‘reviewing official’ means a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.”).</p> <p><i>State ex rel. Dominguez v. State</i>, 129 Ohio St. 3d 203, 2011-Ohio-3091, 951 N.E.2d 77 (recognizing section 2935.09 allows a private citizen to initiate criminal proceedings via an affidavit, not a complaint; and dismissing the private citizen’s petition on the ground that he failed to comply with the filing procedures and the criminal offense at issue occurred outside the statute of limitations period).</p>
Oklahoma		
Oregon		
Pennsylvania		<p>Pa. R. Crim. P. 506 (“When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay. . . . If the attorney for the Commonwealth . . . disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the court of common pleas for review of the decision.”).</p> <p><i>Commonwealth v. Benz</i>, 565 A.2d 764 (Pa. 1989) (concluding that the Superior Court had the power to review and reverse the decision of a lower court that affirmed the district attorney’s disapproval of a private criminal complaint filed pursuant to former Pa. R. Crim.P. 133 (and current Rule 506); and finding that the Superior Court correctly determined that there is</p>

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		sufficient evidence to establish a <i>prima facie</i> case that a crime had been committed and correctly ordered the district attorney's office to commence prosecution).
Rhode Island		<p>R.I. Gen. Laws Ann. § 12-10-12 (“Subject to any other provisions of law relative to the filing of complaints for particular crimes, any judge of the district court or superior court may place on file any complaint in a criminal case other than a complaint for the commission of a felony or a complaint against a person who has been convicted of a felony or a private complaint. . .”).</p> <p>R.I. Gen. Laws Ann. § 12-12-1.3 (“An offense which may be punished by imprisonment for a term not exceeding one year or a fine not exceeding one thousand dollars (\$1,000) may be prosecuted by complaint.”).</p> <p><i>Cronan ex rel. State v. Cronan</i>, 774 A.2d 866 (R.I. 2001) (affirming defendant’s conviction of misdemeanor assault and observing that state law authorizes the prosecution of criminal offenses by private complaint provided that the offense may be punishable by imprisonment not exceeding one year or a fine not exceeding \$1,000).</p>
South Carolina		
South Dakota		
Tennessee	Tenn. Code Ann. § 40-12-104 (a)-(c) (“Any person having knowledge or proof of the commission of a public offense triable or indictable in the county may testify before the grand jury. . . . The person shall designate two (2) grand jurors who shall, with the foreman, comprise a panel to determine whether the knowledge warrants investigation by the grand jury.”).	
Texas	Tex. Crim. Proc. Code Ann. art. 20.09 (“The grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other	

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	credible person.”).	
Utah		
Vermont		
Virginia		
Washington		Wash. CrRLJ [Criminal Rules for Courts of Limited Jurisdiction] 2.1 (c) (“Citizen Complaints. Any person wishing to institute a criminal action alleging a misdemeanor or gross misdemeanor shall appear before a judge empowered to commit persons charged with offenses against the State, other than a judge pro tem. . . . The judge may consider any allegations on the basis of an affidavit sworn to before the judge. . . .”).
West Virginia	<p>W. Va. Const. art. III, § 17 (“The courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.”).</p> <p><i>State Ex Rel. Miller v. Smith</i>, 285 S.E.2d. 500, 504-505 (W. Va. 1981) (holding that petitioner-victim is entitled to a writ of prohibition that restrains the prosecutor from attempting to dissuade or discourage the grand jury from hearing from the petitioner regarding a criminal complaint on the ground that petitioner’s constitutional right to seek redress for a criminal wrong, under article 3, section 17 of the Virginia Constitution, includes a right to present a criminal complaint directly to the grand jury”; and observing that “[i]f the grand jury is available only to the prosecuting attorney and all complaints must pass through him, the grand jury can justifiably be described as a prosecutorial tool”).</p>	<p>W. Va. R. Crim. P. 3 (“The complaint is a written statement of the essential facts constituting the offense charged. The complaint shall be presented to and sworn or affirmed before a magistrate in the county where the offense is alleged to have occurred. <i>Unless otherwise provided by statute</i>, the presentation and oath or affirmation shall be made by a prosecuting attorney or a law enforcement officer showing reason to have reliable information and belief.”) (Emphasis added).</p> <p><i>For an example of statutes that expressly provide a private citizen with the right to present complaints directly to the court, see the following statutes addressing domestic violence cases.</i></p> <p>W. Va. Code Ann. § 48-27-304 (“An action under this article is commenced by the filing of a verified petition in the magistrate court. . . . No person shall be refused the right to file a petition under the provisions of this article.”).</p> <p>W. Va. Code Ann. § 48-27-305 (“A petition for a protective order may be filed by: (1) A person seeking relief under this article for herself or himself; (2) An adult family or household member for the protection of the victim or for any family or household member who is a minor child or physically or</p>

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		<p>mentally incapacitated to the extent that he or she cannot file on his or her own behalf, or (3) A person who reported or was a witness to domestic violence and who, as a result, has been abused, threatened, harassed or who has been the subject of other actions intended to intimidate the person.”).</p> <p>W. Va. Code Ann. § 48-27-902(a) (“Any person authorized to file a petition [for a protective order] pursuant to section three hundred five of this article, and any person authorized to file a petition for civil contempt pursuant to section nine hundred one of this article <i>may file a criminal complaint</i>” against persons who commit certain violations.). (Emphasis added).</p>
Wisconsin		<p>Wisc. Stat. Ann. § 968.26(2)(am) (“If a person who is not a district attorney complains to a judge that he or she has reason to believe that a crime has been committed within the judge’s jurisdiction, the judge shall refer the complaint to the district attorney or, if the complaint may relate to the conduct of the district attorney, to another prosecutor . . .”).</p> <p>Wis. Stat. Ann. § 968.26(2)(b) (“If a district attorney receives a referral under par. (am), the district attorney shall, within 90 days of receiving the referral, issue charges or refuse to issue charges. If the district attorney refuses to issue charges, the district attorney shall forward to the judge . . . all law enforcement investigative reports on the matter that are in [his or her] custody[,] . . . his or her records and case files on the matter, and a written explanation why he or she refused to issue charges. . . . The judge shall convene a proceeding as described under sub. (3) if he or she determines that a proceeding is necessary to determine if a crime has been committed.”)</p> <p>Wis. Stat. Ann. § 968.26(2)(d) (“In [such] a proceeding . . . the judge may issue a criminal complaint if the judge finds sufficient credible evidence to warrant a prosecution of the complaint.”).</p>
Wyoming		

