



# THE SUPREME COURT *of* OHIO

REPORT *and* RECOMMENDATIONS *of the*

## Task Force

*to Examine Improvements  
to the Ohio Grand Jury System*



JULY 2016



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REPORT AND RECOMMENDATIONS  
OF THE  
TASK FORCE TO EXAMINE IMPROVEMENTS  
TO THE OHIO GRAND JURY SYSTEM

JULY 2016



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Dear Chief Justice O'Connor:

Enclosed please find the final report and recommendations of the Supreme Court Task Force to Examine Improvements to the Ohio Grand Jury System. We were charged to study our current process and determine ways to better educate the public so they would have a better understanding of how our grand jury system works and ways to instill or ensure public confidence in the process.

I would first like to thank all the members of the task force who accepted the invitation to serve and devoted their time and energy to get a timely report to you. Second, I would like to thank the staff at the Supreme Court for their organizational skills, research and support which allowed the task force to quickly receive the information necessary to have informed discussions and debates on the issues.

It is my hope that the recommendations within this report have achieved the goals as articulated by the Chief Justice. On behalf of the members of the task force I would like to thank Chief Justice O'Connor for the opportunity she provided for each member to serve and participate.

Judge Stephen L. McIntosh



## TABLE OF CONTENTS

<b>TASK FORCE CHARGE</b> .....	1
<b>INTRODUCTION</b> .....	2
<b>SUMMARY OF RECOMMENDATIONS</b> .....	4
<b>REPORT AND RECOMMENDATIONS</b> .....	5
<b>I. Police Lethal Use of Force</b> .....	5
<b>II. Role of Judiciary, Prosecution, and Grand Jury</b> .....	10
<b>III. Grand Jury Secrecy</b> .....	12
<b>IV. Public Education of the Grand Jury System</b> .....	18
<b>V. Rule and Statute Review/Reconciliation</b> .....	20
<b>APPENDIX A: Proposed Ohio Jury Instruction Amendments</b> .....	21
<b>APPENDIX B: Proposed Crim.R. 6 Amendments</b> .....	27
<b>APPENDIX C: Proposed Grand Jury Video Script</b> .....	27



## **TASK FORCE CHARGE**

Chief Justice Maureen O'Connor of the Supreme Court of Ohio established the Task Force to examine and recommend any improvements to the Ohio grand jury system. Specifically, she requested the Task Force, in addressing this charge, to review each of the following:

1. The grand jury systems used in other states;
2. Chapter 2939 of the Ohio Revised Code and Rule 6 of the Ohio Rules of Criminal Procedure to (A) recommend any necessary amendments to the statutes or rule to improve the neutrality and objectivity of the grand jury system, (B) determine whether the rule should be amended to revise those provisions concerning secrecy of grand jury deliberations, and (C) recommend any necessary amendments to reconcile inconsistencies between the statutes and rule;
3. The topic of grand juror education and instruction to determine (A) whether more extensive grand jury instructions should be included in the Ohio Jury Instructions and (B) whether there is a need for improved grand juror orientation and education;
4. The topic of public understanding of the grand jury system to (A) address the public perception of the grand jury system and the basis for such perception and, if necessary, recommend ways to improve the public's trust and confidence in the system, and (B) address public understanding of the grand jury system and, if necessary, recommend ways to improve public education about the system;
5. Any other topics the Task Force deemed necessary to improve the grand jury system.

## INTRODUCTION

### Overview

The grand jury system has been a part of the fabric of our criminal justice system throughout the nation's history. Each American colony instituted its own version of the grand jury system. At least two of the original 13 colonies – Massachusetts and New Hampshire – made their ratification of the United States Constitution contingent on the inclusion of a grand jury provision. Furthermore, the concept of a grand jury has been part of the United States Constitution since 1791 with the adoption of the Fifth Amendment.

Likewise, the grand jury has been a constant in the Ohio Constitution's Bill of Rights as far back as the original constitution in 1803. While other states have chosen different systems for initiating criminal proceedings, every Ohio constitutional revision since has preserved the protection of the grand jury.

However, recent state and national events have raised questions as to whether the grand jury system can be improved and if there are additional steps that should be taken to increase the public's confidence, understanding, and trust in the system. In response to these questions, in January 2016, Chief Justice Maureen O'Connor established the Supreme Court Task Force to Examine Improvements to the Ohio Grand Jury System. Acknowledging that the grand jury system is embedded in the Ohio Constitution's Bill of Rights, the Chief Justice did not ask the Task Force to determine whether the grand jury system should be eliminated. Rather, the Chief Justice charged the Task Force with examining and recommending any necessary improvements to the system.

### Work of the Task Force

For the past six months the Task Force has endeavored to meet its charge. To accomplish this goal, the Task Force established the following five workgroups:

- **Police Lethal Use of Force**, to determine if new processes or procedures are needed to ensure fairness and equality in cases involving police lethal use of force and, if so, make recommendations for improved processing or procedures in such cases.
- **Role of the Judiciary, Prosecution, and Grand Jury**, to determine (1) whether more extensive grand jury instructions should be included in the Ohio Jury Instructions, (2) whether there is a need for improved grand juror orientation and education, and (3) whether the current balance between prosecutorial and judicial roles in the grand jury system needs to be modified.

- **Grand Jury Secrecy**, to review the reasons for grand jury secrecy and determine whether changes, which are consistent with these reasons, are needed to improve the perception of and public confidence in the grand jury system.
- **Public Perception and Education**, to (1) address public perception of the grand jury system and the basis for such perception and, if necessary, recommend ways to improve public confidence in the system and (2) address public understanding of the grand jury system and, if necessary, recommend ways to improve public education about the system.
- **Rule and Statute Review/Reconciliation**, to (1) review grand jury systems used in other states and (2) review the Ohio Revised Code and Supreme Court rules to (a) determine whether amendments are necessary to improve the neutrality and objectivity of the grand jury system, (b) determine whether the rules should be amended to revise those provisions concerning the grand jury deliberation process, and (c) determine if there are inconsistencies between the statutes and the rules that should be reconciled.

The Task Force now submits its final report and recommendations. The Task Force hopes the report will serve as an educational document for those unfamiliar with the grand jury system and that the information and 10 recommendations outlined in the report will provide a framework for improving this system.

## SUMMARY OF RECOMMENDATIONS

<b>Recommendation</b>	<b>Page No.</b>
1. Grant the Ohio Attorney General’s Office exclusive authority to investigate and prosecute police lethal use-of-force cases through its Special Prosecutions Section and the Bureau of Criminal Investigation.	6
2. Amend the Ohio Jury Instructions regarding the role of the grand jury so as to emphasize the grand jury’s independence.	10
3. Improve grand jury orientation and education by providing a written copy of the judge’s instructions for the grand jury to keep and encouraging jurors to re-read the instructions before hearing cases.	11
4. Restructure Crim.R. 6 to increase clarity and reader comprehension.	12
5. Amend Crim.R. 6 to address the record of grand jury proceedings, including who has responsibility for creating and maintaining the record, as well as what is to be included in the record.	13
6. Amend Crim.R. 6 to establish a standardized procedure to allow for the limited release of the record of the grand jury proceedings.	14
7. Create an informational grand jury video.	18
8. Create an informational grand jury brochure.	18
9. Have the Supreme Court work with other justice partners to create new outreach and educational opportunities.	19
10. Amend R.C. Chapter 2939 to harmonize it with the grand jury composition and organizational requirements in Crim.R. 6.	20

## REPORT AND RECOMMENDATIONS

### I. POLICE LETHAL USE OF FORCE

#### *Introduction:*

Many of the state and national events that led to the creation of the Task Force involved instances of police lethal use of force (“PLUF”). In light of this, a primary goal of the Task Force was to address the use of grand juries in this context to determine if new processes or procedures are needed to ensure fairness and equality in cases involving PLUF. If so, the Task Force was to make recommendations for improved processes or procedures in such cases.

The Task Force recognized early in its deliberations that county prosecuting attorneys in whose jurisdiction a fatal police shooting takes place are in an inherently difficult position. To be effective, prosecuting attorneys must work on an almost daily basis with law enforcement personnel in their jurisdiction. This often includes extensive interaction during the course of felony investigations and trial preparation. And in a substantial percentage of felony prosecutions, the primary witnesses for the prosecution are police officers.

At the same time, however, county prosecuting attorneys are called upon to investigate the very same police officers they work with on a daily basis involving the reasonableness of the most difficult decision those officers make: whether to use lethal force. Though it is presumed that the prosecuting attorney is in fact objective, impartial, and deliberate in the investigation and charging decisions, PLUF cases present communities and prosecuting attorneys with highly charged issues that deserve the utmost consideration for objectivity in practice and in perception.

Judges are sometimes faced with similar challenges when judging certain cases. There are cases that come before judges in which they know they can be objective, fair, and deliberative in reaching a decision from which they must nonetheless disqualify themselves due to the appearance that they may not. Indeed, we expect judges to recuse themselves to avoid even the appearance of impropriety because the effectiveness of the justice system is dependent upon garnering and retaining the public’s trust and confidence in its integrity. This is precisely why Jud.Cond.R. 2.11(A) states in pertinent part, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality *might* reasonably be questioned ...” (emphasis added). There are cases that come before judges in which they know they can be fair and impartial, but from which they must disqualify themselves due to the appearances and the importance of retaining the trust of both individual litigants and the public in the integrity of the justice system.

This report does not question – and in fact it recognizes and commends – the high integrity and professionalism attributed to county prosecuting attorneys. Rather, it simply recognizes that public perception is not uniform in cases where law enforcement uses lethal force that results in civilian death. County prosecuting attorneys work quite closely on a daily basis with law

enforcement officers to prosecute those charged with crimes. When prosecuting attorneys take on a necessarily investigative and potentially adversarial role in PLUF cases, the need to preserve public confidence is significantly heightened.<sup>1</sup>

Based on the foregoing, the Task Force strongly recommends the General Assembly establish a consistently applied system for investigating all PLUF cases, including, but not limited to the appointment of special prosecutors external from the county of the PLUF incident.<sup>2</sup> To that end, the Task Force has identified a specific system utilizing the resources of the Ohio Attorney General's Office that it believes would serve to engender and retain public confidence in the impartiality of the grand jury system in PLUF cases.

***Recommendation 1:***

**The Task Force recommends the Ohio Attorney General's Office be granted exclusive authority to investigate and prosecute police lethal use-of-force cases through its Special Prosecutions Section and the Bureau of Criminal Investigation.<sup>3</sup>**

***Discussion:***

The Ohio Attorney General's Office presently has the express statutory authority to prosecute several specific types of criminal cases, but only after the local county prosecuting attorney fails to exercise the right of first refusal. For example, in the prosecution of criminal cases developed by the Ohio Organized Crime Investigation Commission, the following right of first refusal system is in place (R.C. 177.03(D)(2)(a)):

If a prosecuting attorney who has been referred information under this division fails to notify the commission in writing, within thirty days after the referral, that the prosecuting attorney will present the information to the grand jury of the prosecuting attorney's county, the task force, except

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<sup>1</sup> The prosecution of a sheriff's deputy might raise an additional and specific question that goes beyond appearances. R.C. 309.09(A) provides: "The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, all other county officers and boards ..." The county sheriff is a county officer under R.C. Chapter 311. Absent insurance counsel, the county prosecutor would represent a sheriff's deputy in an excessive use-of-force civil case. Therefore, if a sheriff's deputy uses lethal force, Prof.Cond.R. 1.7(a)(2) would be implicated for the sheriff's county prosecutor. Prof.Cond.R. 1.7 identifies a conflict in circumstances when "there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests." The same analysis would apply to township officers under R.C. 309.09(B)(1).

<sup>2</sup> There is legislation pending in nine other states that proposes this same solution as of the drafting of this report. Those states are California, Iowa, Kansas, Massachusetts, Missouri, Nebraska, New Jersey, New York, and Pennsylvania.

<sup>3</sup> This includes only cases that result in a fatality.

as provided in division (D)(2)(b) of this section, shall refer a copy of all of the information to the attorney general, who shall proceed [to prosecute] according to division (B) of section 109.83 of the Revised Code.<sup>4</sup>

The Bureau of Criminal Investigation (“BCI”) within the Ohio Attorney General’s Office has similarly limited investigatory jurisdiction. Under R.C. 109.541, BCI generally only has authority to investigate crimes on the invitation of local law enforcement.

The Ohio Attorney General’s Office also houses a Special Prosecutions Section. The Section is comprised of more than a dozen trial prosecutors, all of whom had extensive criminal prosecution experience prior to joining the Attorney General’s Office. The Section can act, upon request of the appropriate local authority, as lead prosecuting attorney in cases where a conflict of interest exists. In addition, local prosecuting attorneys can call on the Section members to serve as assistant prosecutors in cases where their specialized knowledge can be utilized or if there is a lack of local resources to effectively prosecute a case.

Attorneys with the Special Prosecutions Section are routinely involved in the prosecution of unique and complex cases and have specialized backgrounds in prosecuting crimes, such as synthetic and prescription drug abuse, crimes against children, capital murder, cold case homicides, white collar crime, and public corruption. In 2015, the Section opened more than 505 cases in 67 counties.

The services of the Special Prosecutions Section currently come at no cost to the jurisdiction that requests the Section’s assistance. However, given the significant increase in workload required to investigate and prosecute PLUF cases statewide, the Task Force recommends that the budget of the Ohio Attorney General’s Office be increased as needed to accommodate the anticipated caseload increase.

The advantages to granting the Ohio Attorney General’s Office exclusive authority to investigate PLUF cases through BCI and, if necessary, prosecute PLUF cases through the Special Prosecutions Section include the reality that the Attorney General does not have the close working relationship that the local prosecuting attorney has with local law enforcement officers who may be subject to an investigation in a case involving a PLUF incident. This “step removed” from local law enforcement would serve to increase public confidence that decisions on the investigation and, if needed, presentation of a PLUF case to a grand jury are being made objectively, impartially, and with great deliberation.

An additional advantage is promoting a higher degree of uniformity as to how PLUF cases are investigated throughout the state. Requiring that BCI be the sole agency responsible to investigate PLUF cases would not only further serve to increase public confidence in

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<sup>4</sup> The Ohio Attorney General also has specific statutory authority to prosecute cases of workers’ compensation fraud (R.C. 109.84), Medicaid fraud (R.C. 109.85), and election fraud (R.C. 109.95), all subject to the right of first refusal of the local county prosecutor in whose jurisdiction the crime was committed.

impartiality, but also promote greater statewide uniformity in the investigative approach and, where necessary, presentation to a grand jury.

A third advantage would be continuity if BCI undertakes the investigation from the very beginning. It is the specific recommendation of the Task Force that any implementing legislation require that any PLUF case be immediately turned over to BCI to ensure this continuity from the initial investigation and throughout the remainder of the justice process.

It should be noted that there is a disadvantage in granting the Ohio Attorney General's Office exclusive authority to prosecute PLUF cases. This would be the first type of case for which the Attorney General is given *exclusive* authority to prosecute a matter without the local prosecuting attorney enjoying a right of first refusal or inviting the Attorney General to provide prosecutorial assistance. This "first" could be viewed as an encroachment by the state government into areas traditionally reserved for local government.

However, the Task Force strongly believes that the advantages to granting the Ohio Attorney General's Office exclusive authority to investigate and prosecute PLUF cases greatly outweigh that disadvantage. PLUF cases present unique challenges to prosecuting attorneys and courts generally not found in other types of cases relative to the investigation and the public's perception of the outcome of that investigation. Often much of the information concerning the PLUF is public, even before an in-depth investigation is opened. As a result, public perceptions can be formed, even in the absence of a complete review of the facts and circumstances of the case. It is particularly important, therefore, that the investigation of an incident, the possible presentation to a grand jury, and, where warranted, prosecution for PLUF cases be conducted with the utmost respect of the officers involved and the public's immediate and long-term interest in the integrity of the justice system. Based on the foregoing, the Task Force respectfully urges the Ohio General Assembly to introduce and pass legislation that gives the Attorney General's Office exclusive authority to investigate and prosecute PLUF cases through BCI and the Special Prosecutions Section.<sup>5</sup>

Finally, Representative Cupp states he generally supports this recommendation, but with limitations, as he finds the current recommendation to be overly inclusive. His position is based upon the following observations:

- Not every PLUF case produces distrust in the criminal justice system. Thus, there is not a need for every such case to automatically become the primary responsibility of the Ohio Attorney General's office.
- The recommendation would be needlessly expensive because it would produce no greater confidence in the grand jury system in the cases that do not address the societal concerns, which the recommendation seeks to alleviate;

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<sup>5</sup> This recommendation should not be construed as an endorsement of any pending legislation that may exist as of the drafting of this report.

- There are cases that need not become the primary responsibility of the Ohio Attorney General's Office (e.g., cases where the deceased intended to be killed as a form of suicide and hostage situations). A screening mechanism should be created to eliminate from the automatic authority of the Attorney General's Office those cases where the facts do not support a *prima facie* appearance of improper or unreasonable use of lethal force.

## II. ROLE OF JUDICIARY, PROSECUTION, AND GRAND JURY

### *Introduction:*

The operation of the grand jury system involves three distinct entities, each with its own role and responsibilities: the judiciary, prosecuting attorneys, and grand jury members. The successful operation of the grand jury system is dependent upon each and the effective performance of their responsibilities. With this in mind, the Task Force addressed the following questions: (1) whether more extensive directions should be included in the Ohio Jury Instructions (“OJI”), (2) whether there is a need for improved grand juror orientation and education, and (3) whether the current balance between prosecutorial and judicial roles in the grand jury system needs to be modified.

In addressing these questions, the subcommittee focused on one overarching concept: the grand jury’s independence. While Ohio’s judiciary and prosecuting attorneys certainly have a role to play in the grand jury system, their involvement should never overshadow the grand jury’s inherent power to make its own decisions. Based upon that focal point, the Task Force sought ways for the judiciary and prosecution to enhance the grand jury’s independence, and presents the following recommendations.

### *Recommendation 2:*

**The Task Force recommends amending the Ohio Jury Instructions regarding the role of the grand jury so as to emphasize the grand jury’s independence.**

### *Discussion:*

Currently, section CR 301.07 of the OJI contains a sample format of the charge a judge is required to read to the grand jury once it is impaneled.<sup>6</sup> While the current OJI version of this charge makes reference to the grand jury’s independence, the Task Force proposes changes to emphasize this independence.

Specifically, the OJI should state that the grand jury foreperson has the ability to request advice from the court at any time (see lines 110 and 111 of **Appendix A**). Additionally, the OJI should indicate the grand jury is allowed to ask the prosecuting attorney for any other charges that may be considered, based upon the facts presented to the grand jury (see lines 113 through 115 of **Appendix A**). Furthermore, there should be a distinct section emphasizing that grand jurors are the “sole judges of the facts” (see lines 156 through 160 of **Appendix A**).

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<sup>6</sup> R.C. 2939.07.

***Recommendation 3:***

**The Task Force recommends improving grand jury orientation and education by providing a written copy of the judge’s instructions for the grand jury to keep and encouraging jurors to re-read the instructions before hearing cases.**

***Discussion:***

While the court is required to instruct a grand jury on its legal duties, it only does so once. The Task Force recommends the OJI instructions be amended to state that the jurors be provided with a written copy of the instructions that they may keep (see lines 6 through 10 of **Appendix A**). A grand jury may be tasked with listening to several days of testimony, spread out over several months. By allowing jurors to keep a written copy of the court’s legal instructions, the grand jury can refer to them as needed. Furthermore, suggesting that jurors be given time to re-read these instructions upon returning for subsequent meetings increases the grand jury’s awareness of their own independence and authority.

### III. GRAND JURY SECRECY

#### *Introduction:*

The United States has a long tradition of preserving the secrecy of grand jury proceedings. This secrecy is necessary for a variety of reasons, including each of the following:<sup>7</sup>

- To prevent the escape of those whose are the subject of the grand jury and potential indictment;
- To ensure the freedom of the grand jury in its deliberations and to prevent persons subject to indictment or associated with such persons from influencing the jurors;
- To prevent the tampering with witnesses who may testify before the grand jury and later appear at the trial of those indicted by it;
- To encourage free and untrammelled disclosures by persons who have information with respect to the commission of crimes;
- To protect innocent parties from disclosure of the fact that they have been under investigation.

However, because few citizens possess personal experience with the grand jury system, an unfortunate side effect of this secrecy is the general lack of public understanding of the system and how it operates. In turn, this limited understanding has negatively impacted the public's perception of and confidence in the grand jury system.

The Task Force believes the perception of lack of confidence in the grand jury system can be improved, in part, by addressing grand jury secrecy. To this end, the Task Force recommends amendments to those portions of Crim.R. 6 governing the secrecy of grand jury proceedings in the state. If adopted, these amendments would continue the general secrecy of the grand jury proceedings while allowing limited public access, providing clarity, and promoting uniformity across the state.

#### *Recommendation 4:*

**The Task Force recommends restructuring Crim.R. 6 to increase clarity and reader comprehension.**

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<sup>7</sup> *U.S. v. Amazon Indus. Chemical Corp.*, 55 F.2d 254, 261 (D. Md. 1931)

***Discussion:***

In a single half-page paragraph, current Crim.R. 6(E) addresses (1) the general disclosure of grand jury deliberations and grand juror votes, (2) the disclosure of other matters occurring before the grand jury by the prosecuting attorney for use in official duties, (3) the general disclosure of other matters occurring before the grand jury by a grand juror, interpreter, etc. when directed by the court, (4) the disclosure of indictments, (5) the sealing of indictments, and (6) the docketing and disclosure of sealed indictments.

The Task Force believes Crim.R. 6 could be improved through the simple restructuring of the rule. Specifically, the Task Force proposes retaining the current substantive provisions of Crim.R. 6(E), but relocating them to the end of the rule and then reorganizing them to individually address each of the following topics concerning the secrecy of matters occurring before the grand jury: (1) the general requirement of secrecy, (2) disclosures of matters to prosecuting attorneys, (3) disclosures of matters by direction or permission of the court, and (4) disclosures of indictments (see lines 44 through 60 and 89 through 115 of **Appendix B**).

***Recommendation 5:***

**The Task Force recommends amending Crim.R. 6 to address the record of grand jury proceedings, including who has responsibility for creating and maintaining the record, as well as what is to be included in the record.**

***Discussion:***

Current Crim.R. 6(E) focuses on the proceedings and other matters occurring before a grand jury, but it does not address the actual record of the grand jury proceedings. The Supreme Court has interpreted Crim.R. 22 as mandating that all grand jury proceedings must be recorded.<sup>8</sup> Although there are limited statutory provisions that allow for the keeping of minutes and notes from the grand jury proceedings, the Task Force found that currently there is no single standard governing who creates a full record of the grand jury proceedings (e.g., a court reporter), nor who maintains that record (e.g., the court reporter, the clerk, the court itself, etc.). Thus, the responsibility for these functions differs from court to court.<sup>9</sup>

In order to make any recommendations regarding the secrecy of the record of grand jury proceedings, there must be a certain degree of uniformity as to how the record is produced and

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<sup>8</sup> *State v. Grewell*, 45 Ohio St. 3d 4, 8 and 9 (1989).

<sup>9</sup> R.C. 2939.09 states that the grand jury *may* appoint one of its members to serve as a clerk and preserve the minutes of its proceeding and actions. Additionally, R.C. 2939.11 provides that the official reporter of the county, or any reporter designated by the court of common pleas, at the request of the prosecuting attorney, or any such reporter designated by the attorney general in investigations conducted by the attorney general, may take notes of or electronically record testimony before the grand jury, and furnish a transcript to the prosecuting attorney or the attorney general, and to no other person. If the proposed amendments to Crim.R. 6 concerning the recording of the proceedings are adopted, the Task Force recommends these statutes be addressed.

maintained. To this end, the Task Force believes Crim.R. 6 should be amended to provide the following:

- The court reporter or other person designated by the court should be responsible for preparing a record of the grand jury proceedings (see lines 121 and 122 of **Appendix B**);
- The record should consist of a recording of the proceedings and include the proceedings' name and number, the charge to the jury, the names of the witnesses appearing before the grand jury, the instructions given by or statements made by the court and the prosecuting attorney; the questions asked of witnesses and their responses; and statements or questions made by a grand juror, provided the name or identity of the grand juror is not recorded (see lines 122 through 137 of **Appendix B**);
- The record should not include a recording of the grand jury's deliberations, the vote of individual grand jurors, and the names of the grand jurors (see lines 139 and 140 of **Appendix B**);
- After the grand jury returns an indictment or no-true bill, the record of the grand jury proceedings should be filed under seal with the clerk of the court (see lines 142 through 144 of **Appendix B**).

***Recommendation 6:***

**The Task Force recommends Crim.R. 6 be amended to establish a standard procedure to allow for the limited release of the record of the grand jury proceedings.**

***Discussion:***

As noted, there are important reasons for the secrecy of grand jury proceedings. However, a side effect of this secrecy, coupled with the fact that few citizens possess personal experience with the grand jury system, is that the public generally lacks an understanding of the system and how it operates. This limited understanding can negatively impact the public's perception of and confidence in the grand jury system.

There were a range of views on the Task Force as to what changes should be made to current Crim.R. 6 regarding secrecy of grand jury proceedings. Ultimately, balancing the necessity of maintaining grand jury secrecy with the need for public understanding and maintaining trust and confidence in the system, the Task Force proposed a mechanism by which some information from the records of grand jury proceedings could be made publicly available under limited circumstances.

Under the proposed new language, the record of grand jury proceedings would be presumed *exempt* from public access (i.e., inspection and copying) under the Public Access Rules of the

Rules of Superintendence for the Courts of Ohio (Sup.R. 44 through 47) (see lines 148 through 150 of **Appendix B**). This would be in contrast to the presumption under Sup.R. 45(A) that court records are open to public access.

However, there would be limited instances in which the record of the grand jury proceedings could be made available. First, the clerk of the court could release the record or portions thereof to the prosecuting attorney for use in the performance of the prosecuting attorney's duties, provided the prosecuting attorney could not release the record or a portion of it unless ordered or directed otherwise by a court (see lines 152 through 155 of **Appendix B**).

Additionally, after the record of the grand jury proceedings in which a no-true bill was returned or the proceedings concluded without an indictment is filed with the clerk of the court, any person could file a written petition seeking the release of the record or portions of it (see lines 157 through 163 of **Appendix B**). The petition would have to state with particularity the reason for which it is made and how the presumption of secrecy is outweighed by the public interest in disclosure and transparency (see lines 163 through 165 of **Appendix B**). It is important to note that these requirements would be in contrast with the Public Access Rules, which do not require a requestor to identify him or herself, put the request in writing, nor state the reason for the request.

If the prosecutor sought to indict two or more suspects in the grand jury proceedings for the same offense or offenses and at least one suspect is indicted, the court could not consider the petition until the offense or offenses had been resolved by dismissal, plea (including a plea to a lesser offense), finding of guilt, or acquittal (see lines 167 through 170 of **Appendix B**).

If the court were to find the petition states with particularity the reason for which it is made and how the presumption of secrecy is outweighed by the public interest in disclosure and transparency, the court must schedule a hearing on the request. The court would be required to notify the requestor and the prosecuting attorney. The court would be required to also hold any hearing in camera (i.e., in private) so as to prevent unnecessary disclosure of a matter occurring before the grand jury. (See lines 175 through 178 of **Appendix B**.)

Following the hearing, the court could then order the release if it finds by clear and convincing evidence that each of the following conditions are met (see lines 180 through 192 of **Appendix B**):

- The presumption of secrecy is outweighed by the public interest in disclosure and transparency;
- A significant number of members of the general public in the county in which the grand jury was drawn and impaneled are currently aware that a criminal investigation has been conducted in connection with the subject matter of the grand jury proceeding;

- A significant number of members of the general public in the county in which the grand jury was drawn and impaneled are currently aware of the identity of the subject against whom the criminal charge was submitted to a grand jury.

Finally, prior to releasing the record of the grand jury proceedings or a portion of the record, the court would be required to give the prosecuting attorney a reasonable opportunity to request redaction of any information the release of which could do any of the following (see lines 194 through 212 of **Appendix B**):

- Identify grand jurors;
- Endanger the health, safety, or welfare of witnesses appearing before the grand jury, the members of the grand jury, other persons who are part of the proceedings, or other persons who may be endangered by the release of the record;
- Compromise an ongoing criminal investigation or other criminal proceeding that is not yet public;
- Alert the suspect in a grand jury investigation of that investigation or the existence of an indictment not yet perfected;
- Create a miscarriage of justice;
- Prejudice a co-defendant's right to a fair trial.

The court could charge its “actual costs,” as that term is defined under the Public Access Rules,<sup>10</sup> that are incurred in releasing the record. Additionally, the court could require a deposit of the estimated actual costs. (See lines 214 through 216 of **Appendix B**).

A noteworthy aspect of this recommendation is that it is not limited to just PLUF cases. As previously discussed, many of the state and national events that led to the creation of the Task Force involved instances of PLUF. In light of this, there was discussion of allowing public access to the grand jury proceedings only in such cases.

However, the Task Force determined that the desire for public access in PLUF cases ultimately stems from the fundamental issues of public interest and the interest of justice. Today these issues are implicated by PLUF cases. However, in the future other case types may raise these issues (e.g., corruption in office grand jury proceedings). The Task Force concluded that the best approach would be not to allow public access in only one specific category of case, but rather to establish a system by which the issues of public interest and the interest of justice are addressed,

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<sup>10</sup> Sup.R. 44(A) defines “actual cost” as meaning “the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs, or other transmitting costs; and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.”

regardless of the case type, provided the grand jury proceeding concluded with a no-true bill or without an indictment.

A minority of the members dissented from the majority's recommendation.<sup>11</sup> Although they would support the limited release of the record in appropriate and compelling circumstances, they were unable to vote for the recommendation for the following reasons:

- The recommended standard for a judge to determine when the grand jury proceedings will be made public is too general and lacks sufficient guidance for a court's determination in this sensitive matter. Consequently, widely inconsistent and unpredictable decisions are likely to result for the following reasons:
  - a. The lack of specific factors for determining when the presumption of secrecy is outweighed by the public interest;
  - b. The lack of specificity in the meaning of "public interest," given that any person could seek release of the grand jury proceeding record;
  - c. The lack of a specific standard for determining when a significant number of members of the general public are currently aware of the grand jury proceedings.
- Concern that the proposal may affect substantive rights accorded by the traditional secrecy aspects of the grand jury proceedings, which are beyond the constitutional authority of the Supreme Court to alter or abrogate;
- Concern that the confidentiality that the grand jury process has traditionally afforded to those whom the grand jury has refused to indict could be stripped away even in cases of unwarranted prosecution and, as a result, the unfounded allegations against the innocent would nevertheless be laid out for public view;
- The potentially burdensome time and resource costs for county prosecutors in responding to requests for access to and the redaction of information from the grand jury proceeding record.

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<sup>11</sup> Senator Bacon, Judge Campbell, Representative Cupp, Judge Goulding, Prosecutor Lutz, and Judge Powers.

#### **IV. PUBLIC PERCEPTION OF AND EDUCATION ABOUT THE GRAND JURY SYSTEM**

##### ***Introduction:***

A key to public trust in the grand jury system is the public's understanding of the system. As previously discussed, because of grand jury secrecy and the fact that few citizens possess personal experience with the grand jury system, there is a general lack of public understanding of the system. This limited understanding has negatively impacted the public's perception of and confidence in the grand jury system.

The Task Force's previous recommendations concerning the secrecy of the grand jury proceedings are aimed at dealing with this problem. However, the Task Force believes that public education about the grand jury system also plays an important role in addressing the public's perception of and ensuring public confidence in the system. Additionally, an individual who has knowledge of the grand jury system is more likely to understand the important civic duty he or she will undertake as a grand juror.

To this end, the Task Force presents the following education-related recommendations.

##### ***Recommendation 7:***

**The Task Force recommends the creation of an informational grand jury video.**

##### ***Discussion:***

In 2015, the Supreme Court, in collaboration with the Ohio Judicial Conference, the Ohio State Bar Association, and the Ohio Channel, created an informational video that provides an overview of Ohio's court system and the petit jury. The Task Force recommends that a similar video be created for the grand jury and be made available to all Ohio judges and courts as a way to educate potential members of the grand jury. This video could be made available also to schools and public educational entities to serve as a tool for educating students and the public in general on the key role the grand jury plays in our judicial system. A sample grand jury video script is attached as **Appendix C**.

##### ***Recommendation 8:***

**The Task Force recommends the creation of an informational grand jury brochure.**

##### ***Discussion:***

To supplement the grand jury video, the Task Force believes a grand jury service brochure should be developed or used to educate prospective jurors before they report for jury duty.

Courts could use a generic brochure or they can customize it for their court. Additionally, this brochure could be made available for more general public educational efforts.

***Recommendation 9:***

**The Task Force recommends the Supreme Court work with other justice partners to create new outreach and educational opportunities.**

***Discussion:***

There are a number of legal-related entities in Ohio that currently engage in various educational efforts, including the Ohio State Bar Association, Ohio State Bar Foundation, the John Mercer Langston Bar Association, the Norman S. Minor Bar Association, Ohio Center for Law-Related Education, Ohio Judicial College, Ohio Judicial Conference, Ohio Jury Management Association, Ohio Association for Court Administration, Ohio Clerk of Courts Association, law schools, and local bar associations. Additionally, there are educational entities, such as the Ohio Department of Education and the Ohio Council for Social Studies. Finally, there are community groups with an interest in this topic, including the NAACP and the Urban League. The Task Force recommends the Supreme Court work with these entities to create new outreach and educational opportunities.

For example, the Ohio Center for Law-Related Education (“OCLRE”) provides programs focused on imparting practical law-related information to students and teachers, developing problem-solving and critical thinking skills for students, and providing positive engagement between students and the community. The Supreme Court should work with the OCLRE to establish grand-jury-related educational materials for use in Ohio schools.

Likewise, the Ohio State Bar Association’s Law and Media Conference brings together journalists, lawyers, academics, judges, and others for a day-long discussion of important media law topics. A future topic for the conference could be the grand jury system.

## V. RULE AND STATUTE REVIEW/RECONCILIATION

### *Introduction:*

As previously discussed, many aspects of the grand jury system are governed by Supreme Court rule, in particular Crim.R. 6. However, there are also applicable statutory provisions. Specifically, R.C. Chapter 2939 governs many aspects of the grand jury system, including the selection and composition of jurors and witness testimony.

Because the grand jury system is governed by both rule and statute, there is the potential for conflicts between the two. With this in mind, the Task Force reviewed the Ohio Revised Code and Supreme Court rules in order to identify inconsistencies between the two and recommend any necessary amendments to reconcile those inconsistencies.

### *Recommendation 10:*

**The Task Force recommends amending R.C. Chapter 2939 to harmonize it with the grand jury composition and organizational provisions in Crim.R. 6.**

### *Discussion:*

The Task Force has identified various instances in which the provisions of Crim.R. 6 and R.C. Chapter 2939 should be harmonized, particularly those concerning grand jury composition and organization. In each of these instances, the Task Force believes it is R.C. Chapter 2939 that should be amended in recognition that the grand jury process is, in practice, an extension of the judicial process and not an executive function. The recommended harmonization amendments to R.C. Chapter 2939 include the following topics:

- The role of the foreperson;
- The processing of alternate jurors;
- The procedure in Crim.R. 6 requiring that seven of the nine jurors are required for an indictment;
- The number of members of a grand jury.<sup>12</sup>

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<sup>12</sup> The Task Force determined that most – and likely all – of the courts in Ohio use nine jurors, as is required in Crim.R. 6(A). This practice is likely in place due to a decision by the Supreme Court of Ohio in *State v. Brown*, 38 Ohio St. 3d 305 (1988), in which the Court held that the number of jurors is procedural, and that the requirement of Crim.R. 6 for nine grand jurors should take precedence over the requirement in R.C. 2939.02 of 15 grand jurors. To avoid confusion, the Task Force believes R.C. 2939.02 should be amended to require nine jurors.

APPENDIX A

PROPOSED NEW OHIO JURY INSTRUCTIONS

CR 301.07 Instructions to Grand Jurors<sup>13</sup>

COMMENT

The Court is required to read instructions to the impaneled grand jury. See R.C. §2939.07. Copies of the instructions should be given to each grand juror to use during their term of service, as well as a copy of the grand jury oath. The committee believes in some circumstances the prosecuting attorney should allow the grand jurors to read again the instructions before hearing cases.

I will now give you the instructions of law governing you in the performance of your duties. It is mandatory that you follow these instructions.

FUNCTION

The Constitution of Ohio provides that no person may be placed on trial for a felony unless indicted by a grand jury. You will hear testimony and determine whether persons suspected of the commission of crime should or should not be indicted. This constitutional provision was designed to be a barrier against unjust prosecution. The grand jury should be the means of protecting persons from unfounded accusations. Indictments should be returned against those who you find are probably guilty of the commission of a crime, after an honest and impartial examination.

SECRECY

The oath just administered to you contains some essential principles that should govern you in your deliberations. It contains your promise to keep secret the testimony and deliberations of the grand jury.

There are four reasons for this oath of secrecy. First, you may have accusations brought before you, which, after examination, you will find unfounded. If publicity were given to the fact that the grand jury had investigated a person or organization, their reputation might be ruined. Secondly, if a person who is likely to be charged with a criminal offense by the grand jury should learn of the investigation, he or she might flee. Thirdly, to protect grand jurors in their duties to be free of possible undue influence. Finally, to protect witnesses from intimidation if known to be testifying and to protect their identity in some circumstances.

<sup>13</sup> These new jury instructions would replace the current instructions in CR 301.07 in their entirety.

38  
39 The deliberations of the grand jury and the individual vote of any grand juror shall not be  
40 disclosed. Disclosure of matters other than your deliberations and your individual votes may be  
41 made to the prosecuting attorney for use in the performance of his/her duties. A grand juror,  
42 prosecuting attorney, and other official assisting the grand jury may disclose matters occurring  
43 before the grand jury, other than the deliberations or the vote, when and only when so directed  
44 by this court preliminary to or in connection with a judicial proceeding.  
45

46 No grand juror, officer of the court, or other person shall disclose that an indictment has  
47 been found against a person or organization before such indictment is filed and the case  
48 docketed.  
49

50 Your work is protected by law. It is a crime for others to attempt to influence, intimidate,  
51 or hinder you in the discharge of your duties. Any such attempt should be reported immediately  
52 to the court.  
53

#### 54 **SUFFICIENT EVIDENCE, PROBABLE CAUSE, AND IMPARTIALITY**

55

56 You will hear only one side of a case. It is not your duty to decide the guilt or innocence  
57 of the accused. It is your duty to determine whether there is sufficient evidence or probable cause  
58 to require the accused to stand trial. If the evidence fails to establish the probability of guilt, you  
59 must refuse to return an indictment.  
60

61 Unjust or unfounded indictments should not be returned against anyone. On the other  
62 hand, it is equally important that indictments shall be returned against those who are probably  
63 guilty of criminal acts.  
64

65 You must be fair and just; you must be guided by an impartial spirit. It is your duty to  
66 indict anyone who ought to be indicted and you should not fail to indict such person from either  
67 fear, friendship, reward, or hope of reward. You must present the truth to the best of your ability  
68 and understanding. You must put aside all feelings of prejudice that might in any way interfere  
69 with the impartial performance of your duty. No grand juror has the right to permit his or her  
70 judgment to be influenced by a racial, religious, social, political, or personal feeling. You shall  
71 indict no one because of malice, hatred, or ill will.  
72

#### 73 **INVESTIGATIONS**

74

75 Under the laws of Ohio, you have the power to investigate any crime committed in this  
76 county. You have the power to require any witness to appear and testify before the grand jury in  
77 addition to any witnesses presented by the prosecuting attorney. This is accomplished by the  
78 subpoena power of the Court, and you may continue any case until the witness has testified. No  
79 person may be compelled to be a witness against himself or herself. A witness who testifies  
80 about his or her own participation in a crime must first be advised by the prosecuting attorney in  
81 your presence of his or her constitutional rights.

82  
83 Note you are not a general inquiring body. Your authority to investigate crime is almost  
84 unlimited. However, your investigation must be directed by honest and conscientious motives to  
85 determine whether a person or persons should be charged with a specific crime. No investigation  
86 should be made for the purpose of issuing reports intended to criticize or compliment any person  
87 or organization. No person may demand consideration by the grand jury for personal  
88 exoneration. No one may request the grand jury to investigate another for a crime to avoid the  
89 law of libel and slander.

90  
91 **PROSECUTING ATTORNEY**

92  
93 The prosecuting attorney and his/her assistants are by law the representatives of the State  
94 of Ohio in all criminal prosecutions. You will be working with (insert name of prosecutor[s]). It  
95 is his/her duty to present each case, to give advice touching upon any matter of law which may  
96 be raised, and to examine witnesses and present evidence.

97  
98 During the examination of any witness, any grand juror may ask questions of the witness  
99 in addition to any questions asked by the prosecuting attorney.

100  
101 **[NOTE: The following paragraph would require a statutory amendment]**

102  
103 After the prosecuting attorney has examined a witness, any grand juror may ask the  
104 prosecuting attorney to step outside the grand jury room so the grand jury may ask questions of  
105 the witness without the prosecuting attorney present.

106  
107 The prosecuting attorney will provide instructions to assist you in considering the  
108 evidence and charges to be decided, which will probably be sufficient. It is your duty to follow  
109 the instructions of the prosecutor on matters of law, unless you are instructed to the contrary by  
110 the court. The grand jury foreperson is at liberty at any time to contact the court, either directly  
111 or through the prosecuting attorney, for further or additional instructions.

112  
113 When considering offenses for indictment, the grand jury may ask the prosecuting  
114 attorney for all possible charges which may be considered based upon the facts as the grand jury  
115 finds them. The grand jury may vote to indict or not indict on any or all offenses presented.

116  
117 **WHO MAY BE PRESENT**

118  
119 The prosecuting attorney, grand jurors, the witness under examination, interpreters when  
120 needed, and a stenographer or operator of a recording device may only be present while the  
121 grand jury is in session. The grand jury is not a public proceeding. While deliberating or voting,  
122 no person other than the grand jurors voting may be present.

128 **INDICTMENT**

129  
130 Nine grand jurors will deliberate to decide each case. An indictment may be found only  
131 upon the concurrence of seven or more grand jurors. When so found, the foreperson shall sign  
132 the indictment in that capacity and shall return it to the court. If the accused is in custody or has  
133 been released to bail, and seven jurors do not concur in finding an indictment, the foreperson  
134 shall immediately report to the court that no indictment was returned.

135  
136 **FOREPERSONS AND ALTERNATES**

137  
138 \_\_\_\_\_ is appointed foreperson of this grand jury. The foreperson  
139 shall have the power to administer oaths and affirmations. The foreperson or another juror  
140 designated by him/her shall file the record of the vote with the clerk of courts. The record shall  
141 not be made public except on order of the court.

142  
143 Alternate grand jurors, in the order in which they are called, shall replace grand jurors  
144 who are unable or disqualified to perform their duties. Alternate grand jurors may be present  
145 while the grand jury is in session, except that only the nine voting grand jurors may be present  
146 during deliberation and vote.

147  
148 **COUNTY JAIL (ADDITIONAL)**

149  
150 It is the duty of the grand jury every three months to visit the county jail, examine its  
151 condition, and inquire into the discipline and treatment of the prisoners, their habits, diet, and  
152 accommodations. You shall report on these matters to the court in writing.

153  
154 **INDEPENDENCE**

155  
156 As an investigative body, the grand jury is independent in the performance of its duties.  
157 You are the sole judges of the facts in each case. Neither the prosecuting attorney nor any  
158 assistant has the right to influence you in your decision upon questions of fact. Each grand juror  
159 shall decide whether to vote to indict or not indict completely free of any influence or suggestion  
160 by the prosecuting attorney or any other person. This is your role as an independent grand juror.

161  
162 **CONCLUSION**

163  
164 I want to thank you in advance for taking time out of your busy lives to undertake this  
165 very important civic duty. I realize that each of you is making a personal sacrifice, but I believe  
166 you will find this experience to be one of the most interesting of your lives. You will be  
167 performing one of the absolutely vital functions in the administration of justice under our  
168 American system. This is direct citizen participation in government. You have the thanks of this  
169 Court, and the community at large.

170  
171 Any questions?

172            Anything from the prosecuting attorney?  
173  
174            You may now retire to begin your duties.  
175



## APPENDIX B

### PROPOSED CRIM.R. 6 AMENDMENTS

#### OHIO RULES OF CRIMINAL PROCEDURE

##### RULE 6. The Grand Jury

(A) **Summoning grand juries.** The judge of the court of common pleas for each county, or the administrative judge of the general division in a multi-judge court of common pleas or a judge designated by him, shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of nine members, including the foreman, ~~plus not more than five~~ and a number of alternates as provided in division (G) of this rule.

##### (B) Objections to grand jury and to grand jurors.

(1) **Challenges.** The prosecuting attorney, or the attorney for a defendant who has been held to answer in the court of common pleas, may challenge the array of jurors or an individual juror on the ground that the grand jury or individual juror was not selected, drawn, or summoned in accordance with the statutes of this state. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(2) **Motion to dismiss.** A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified, if it appears from the record kept pursuant to subdivision (C) that seven or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(C) **Foreman and deputy foreman.** The court may appoint any qualified elector or one of the jurors to be foreman and one of the jurors to be deputy foreman. The foreman shall be a member of the grand jury for purpose of voting. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. ~~He~~ The foreman or another juror designated by ~~him~~ the foreman shall keep a record of the number of jurors concurring in the finding of every indictment and shall, upon the return of the indictment, file the record of concurrence with the clerk of court, ~~but the~~ for inclusion with the record of the proceedings filed pursuant to division (I)(2) of this rule. ~~The record of concurrence shall not be made public except on order of the court as provided in division (J) of this rule.~~ During the absence or disqualification of the foreman, the deputy foreman shall act as foreman.

(D) **Who may be present.** The prosecuting attorney, the witness under examination, interpreters when needed, and, a court reporter or other person designated by the court for the

40 purpose of taking the evidence, ~~a stenographer or operator of a recording device~~ and preparing a  
41 record of the proceedings may be present while the grand jury is in session, but no person other  
42 than the jurors may be present while the grand jury is deliberating or voting.

43  
44 ~~(E) **Secrecy of proceedings and disclosure.** Deliberations of the grand jury and the~~  
45 ~~vote of any grand juror shall not be disclosed. Disclosure of other matters occurring before the~~  
46 ~~grand jury may be made to the prosecuting attorney for use in the performance of his duties. A~~  
47 ~~grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or~~  
48 ~~typist who transcribes recorded testimony, may disclose matters occurring before the grand jury,~~  
49 ~~other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such~~  
50 ~~matters only when so directed by the court preliminary to or in connection with a judicial~~  
51 ~~proceeding, or when permitted by the court at the request of the defendant upon a showing that~~  
52 ~~grounds may exist for a motion to dismiss the indictment because of matters occurring before the~~  
53 ~~grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment~~  
54 ~~has been found against a person before such indictment is filed and the case docketed. The court~~  
55 ~~may direct that an indictment shall be kept secret until the defendant is in custody or has been~~  
56 ~~released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall~~  
57 ~~not be docketed by name until after the apprehension of the accused, and no person shall disclose~~  
58 ~~the finding of the indictment except when necessary for the issuance of a warrant or summons.~~  
59 ~~No obligation of secrecy may be imposed upon any person except in accordance with this rule.~~

60  
61 ~~(F) **Finding and return of indictment.** An indictment may be found only upon the~~  
62 ~~concurrence of seven or more jurors. When so found, the foreman or deputy foreman shall sign~~  
63 ~~the indictment as foreman or deputy foreman. The indictment shall be returned by the foreman or~~  
64 ~~deputy foreman to a judge of the court of common pleas and filed with the clerk, who shall~~  
65 ~~endorse thereon the date of filing and enter each case upon the appearance and trial dockets. If~~  
66 ~~the defendant is in custody or has been released pursuant to Rule Crim.R. 46 and seven jurors do~~  
67 ~~not concur in finding an indictment, the foreman shall so report to the court forthwith.~~

68  
69 ~~(G)(F) **Discharge and excuse.** A grand jury shall serve until discharged by the court. A~~  
70 ~~grand jury may serve for four months, but the court upon a showing of good cause by the~~  
71 ~~prosecuting attorney may order a grand jury to serve more than four months, but not more than~~  
72 ~~nine months. The tenure and powers of a grand jury are not affected by the beginning or~~  
73 ~~expiration of a term of court. At any time for cause shown, the court may excuse a juror either~~  
74 ~~temporarily or permanently, and in the latter event the court may impanel another eligible person~~  
75 ~~in place of the juror excused.~~

76  
77 ~~(H)(G) **Alternate grand jurors.** The court may order that ~~not more than five grand~~~~  
78 ~~jurors, in addition to the regular grand jury, be called, impaneled, and sit as alternate grand~~  
79 ~~jurors. Unless provided otherwise by local court rule, the number of alternate jurors shall not~~  
80 ~~exceed five. Alternate grand jurors, in the order in which they are called, shall replace grand~~  
81 ~~jurors who, prior to the time the grand jury votes on an indictment, are found to be unable or~~  
82 ~~disqualified to perform their duties. Alternate grand jurors shall be drawn in the same manner,~~  
83 ~~shall have the same qualifications, shall be subjected to the same examination and challenges,~~

84 shall take the same oath, and shall have the same functions, powers, facilities, and privileges as  
85 the regular ~~grand~~ jurors. Alternate ~~grand~~ jurors may sit with the regular grand jury, but shall not  
86 be present when the grand jury deliberates and votes.

87  
88 **(H) Secrecy of matters occurring before the grand jury.**

89  
90 **(1) General.** Except as provided in divisions (H)(2) through (4) and (J)(1) through  
91 (3) of this rule, matters occurring before a grand jury shall not be disclosed.

92  
93 **(2) Disclosure to prosecuting attorney.** Matters occurring before a grand jury, other  
94 than the deliberations of the grand jury and the vote of a juror, may be disclosed to the  
95 prosecuting attorney for use in the performance of the duties of the prosecuting attorney,  
96 provided the prosecuting attorney shall not disclose such matters unless ordered or directed  
97 otherwise by a court.

98  
99 **(3) Disclosure by direction or permission of the court.** A grand juror, prosecuting  
100 attorney, interpreter, court reporter, operator of a recording device, or typist who transcribes  
101 recorded testimony may disclose matters occurring before the grand jury, other than the  
102 deliberations of the grand jury and the vote of a juror, when directed by the court in either of the  
103 following instances:

104  
105 **(a) Preliminary to or in connection with a judicial proceeding;**

106  
107 **(b) At the request of the defendant upon a showing that grounds may exist for a**  
108 **motion to dismiss the indictment because of matters occurring before the grand jury.**

109  
110 **(4) Disclosure of indictment.** A juror, officer of the court, or other person shall not  
111 disclose that an indictment has been found against a person before the indictment is filed and the  
112 case docketed pursuant to division (E) of this rule. The court may direct that an indictment shall  
113 be kept secret until the defendant is in custody or has been released pursuant to Crim.R. 46. No  
114 obligation of secrecy may be imposed upon any person except in accordance with this rule.

115  
116 **(I) Record of the Grand Jury Proceedings.**

117  
118 **(1) Creation.**

119  
120 **(a) A court reporter or other person designated by the court shall prepare a record of**  
121 **the grand jury proceedings. The record shall consist of a recording of the proceedings prepared**  
122 **by stenographic means, phonographic means, photographic means, audio electronic recording**  
123 **devices, or video recording systems. The record shall include all of the following information:**

124  
125 **(i) The name and number of the proceedings;**

126  
127 **(ii) The charge to the grand jury;**

- 128
- 129           (iii) The names of witnesses appearing before the grand jury;
- 130
- 131           (iv) Instructions given or statements made by the court and the prosecuting attorney;
- 132
- 133           (v) Each question asked of and response given by a witness;
- 134
- 135           (vi) Statements or questions made by a juror during the proceeding, provided the
- 136 name or identity of the juror shall not be recorded.
- 137
- 138           (b) The record of the grand jury proceedings shall not include a recording of the
- 139 deliberations of the grand jury, the vote of individual jurors, or the names of the jurors.
- 140
- 141           (2) **Filing.** The court reporter or other person designated by the court shall file the
- 142 record of the grand jury proceedings under seal with the clerk of the court after the conclusion of
- 143 the proceedings.
- 144
- 145           **(J) Release of the Record of Grand Jury Proceedings.**
- 146
- 147           (1) **Public access exemption.** The record of the grand jury proceedings shall be
- 148 exempt from public access pursuant to Sup.R. 44 through 47 and not released, except as provided
- 149 in divisions (J)(2) and (3) of this rule.
- 150
- 151           (2) **Release to prosecuting attorney.** A clerk of the court may release the record of
- 152 the grand jury proceedings or portions thereof to the prosecuting attorney for use in the
- 153 performance of the duties of the prosecuting attorney, provided the prosecuting attorney shall not
- 154 release the record or portions thereof unless ordered or directed otherwise by a court.
- 155
- 156           (3) **Other release.**
- 157
- 158           (a) After the record of the grand jury proceedings in which a no-true bill was returned
- 159 or the proceedings concluded without an indictment is filed with a clerk of the court pursuant to
- 160 division (I)(2) of this rule, any person may file a written petition seeking the release of the record
- 161 or portions thereof of the proceedings in which a no-true bill was returned or the proceedings
- 162 concluded without an indictment. The petition shall state with particularity the reason for which
- 163 it is made and how the presumption of secrecy is outweighed by the public interest in disclosure
- 164 and transparency.
- 165
- 166           (b) If the prosecutor sought to indict two or more suspects in the grand jury
- 167 proceedings for the same offense or offenses and at least one suspect is indicted, the court shall
- 168 not consider the petition until the offense or offenses have been resolved by dismissal; plea,
- 169 including a plea to a lesser offense; finding of guilt; or acquittal.
- 170

171           (c)    If the court finds the petition does not meet the requirements of division (J)(3)(a)  
172 of this rule, the court shall deny the petition.

173  
174           (d)    If the court finds the petition meets the requirements of division (J)(3)(a) of this  
175 rule, the court shall schedule a hearing on the petition. The court shall notify the requestor and  
176 the prosecuting attorney. The court shall hold the hearing in camera so as to prevent unnecessary  
177 disclosure of a matter occurring before the grand jury.

178  
179           (e)    Following the hearing, the court may order release of the record or portions  
180 thereof if it finds by clear and convincing evidence that each of the following conditions are met:

181  
182           (i)    The presumption of secrecy is outweighed by the public interest in disclosure and  
183 transparency;

184  
185           (ii)   A significant number of members of the general public in the county in which the  
186 grand jury was drawn and impaneled are currently aware that a criminal investigation  
187 was conducted in connection with the subject matter of the grand jury proceedings;

188  
189           (iii)   A significant number of members of the general public in the county in which the  
190 grand jury was drawn and impaneled are currently aware of the identity of the suspect in  
191 the grand jury proceedings.

192  
193           (f)    Prior to releasing the record or portions thereof, the court shall give the  
194 prosecuting attorney a reasonable opportunity to request redaction of any information the release  
195 of which could do any of the following:

196  
197           (i)    Identify grand jurors;

198  
199           (ii)   Endanger the health, safety, or welfare of witnesses appearing before the grand  
200 jury, the members of the grand jury, other persons who are part of the proceedings, or other  
201 persons who may be endangered by the release of the record;

202  
203           (iii)   Compromise an ongoing criminal investigation or other criminal proceeding that  
204 is not yet public;

205  
206           (iv)   Alert the suspect in a grand jury investigation of that investigation or the  
207 existence of an indictment not yet perfected;

208  
209           (v)    Create a miscarriage of justice;

210  
211           (vi)   Prejudice the right of a co-defendant to a fair trial.  
212

213           (g)    The court may charge its actual costs, as defined by Sup.R. 44(A), incurred in  
214 releasing the record of the grand jury proceedings or portions thereof. The court may require a  
215 deposit of the estimated actual costs.

## APPENDIX C

### GRAND JURY VIDEO SCRIPT

VIDEO	AUDIO
Opening title graphic: You as a Grand Juror in Ohio’s Court System	(music)
Narrator/Host with main courtroom in background	Grand juries play an important role in our judicial system to protect innocent persons from false accusations; and to be fair and impartial when evaluating evidence to decide whether fellow citizens will be placed on trial for criminal offenses.
Graphic of Ohio Court System, zoom in on Common Pleas	The grand jury is a part of the common pleas court system in Ohio.
Graphic or picture to represent nine jurors/ five alternates	It is composed of nine people and up to five alternates. All live in the county and were randomly selected to serve, just like trial – or petit – jurors are selected.
Picture of oath being administered and text overlay of oath appears on screen	Each grand jury member takes an oath that includes a vow of secrecy – to keep secret all proceedings of the grand jury. That vow of secrecy is important because it encourages witnesses to testify who otherwise would be unwilling and it protects the reputation of the accused if they are not indicted.
Picture of grand jury room or closed door	All proceedings in the grand jury are conducted in private, not in a courtroom or with a judge. Members of the public are only allowed to attend if they are on the witness stand.
	Every criminal case begins with a prosecutor reviewing the evidence to determine whether charges should be brought against the defendant, or the accused, and if so, what those charges should be. If the prosecutor chooses to bring felony charges against the defendant, then he or she must then present the case to the grand jury in order to move forward with the case.

Text overlay definition of probable cause	Then the grand jury must decide whether there is probable cause to believe that a crime was committed and that the person accused committed it.
Picture of a trial or courtroom	That standard is different than if the case goes to trial – there the person charged has to be found guilty beyond a reasonable doubt.
Picture of jury or jury box	Unlike a trial jury, in a grand jury, the foreperson and members may ask proper questions of any witness.
Narrator/Host on camera	<p>After the prosecutor has presented each witness and explained the law to the grand jury, everyone except the nine grand jury members must leave the grand jury room.</p> <p>The foreperson leads a discussion and conducts a vote on whether to charge the accused.</p> <p>No vote is taken until each member has had the opportunity to be heard.</p> <p>If the grand jury votes to charge the accused, it is known as finding a true bill or an indictment.</p> <p>Votes of seven of the nine grand jurors are required to indict.</p>
Picture of columns with overlay text definition of indictment	An indictment is merely a charge; it must be proven at trial beyond a reasonable doubt before someone can be convicted.
Picture of columns With overlay text definition of no bill	<p>If there are fewer than the seven votes needed for an indictment, then the result is called a “no bill” and the case is dropped.</p> <p>The prosecutor can bring the case back to the grand jury if there is new evidence.</p>
Graphic to represent separate relationship	It’s important to remember that while it’s up to the prosecutor to present the cases to the grand jury, the grand jury is an independent body provided for in both the Ohio and U.S. constitutions.

	<p>The grand jury is not intended to be a rubber-stamp for the prosecutor, and has the authority to decide there's not enough evidence to indict the person accused of a crime.</p>
<p>Narrator/Host on camera</p>	<p>The grand jury operates as a "sword," authorizing the government's prosecution of accused, and as a "shield," protecting citizens from unwarranted, inappropriate, or overzealous prosecutions against unfounded or unfair criminal charges.</p> <p>Grand jury service is an important civic duty.</p> <p>(music up and under) Someone's freedom may depend on it.</p>
<p>Title graphic, such as "Production of the Ohio Supreme Court" or "For more information about grand jury service, go to www ..."</p>	







# THE SUPREME COURT *of* OHIO

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