



Senator Sandra Williams
21st Ohio Senate District

Committees:

- Public Utilities – Ranking Member
- Ways and Means – Ranking Member
- Energy and Natural Resources
- Insurance and Financial Institutions
- Finance Subcommittee on Higher Ed - Vice Chair

Ohio Constitutional Modernization Committee
June 8, 2017

Chairwoman and Members of the Ohio Constitutional Modernization Committee, thank you for the opportunity to submit written testimony on grand jury reform.

Since 2014, Ohio has seen an escalation in recent grand jury cases that have been high profile in nature with controversial results leading to an uproar in our communities. The public has now taken a keen interest in the process and policies of our grand jury system. Part of the concern that arises from these cases comes from the grand jury's high indictment rate juxtaposed against the nationwide reluctance to indict when a police officer is charged.

The Washington Post maintains a database on the number of fatal shootings by police officers. Based on their records, Ohio has seen 18 fatal police shootings in just 2017 alone, with 26 deaths in 2016 and 29 in 2015. Some cases, such as Tyre King and Tamir Rice, have received a great amount of attention for their controversial grand jury proceedings. Cases such as these, that create doubt regarding the accountability and transparency of our criminal justice system, call for reform measures that properly address these concerns. Two recommendations that should be taken up by this committee to alleviate these uncertainties are the appointment of a grand jury counsel and an expansion of access to grand jury transcripts.

The first recommendation requires the appointment of a grand jury counsel, an independent court appointed member of the legal community, to serve as an advisor to the grand jury on procedures and legal instructions. This action can likely be established by the General Assembly or by state amendment. The idea of a grand jury counsel arose from an amendment to the Hawaii constitution in 1978. The state of Hawaii's constitution requires that whenever a grand jury is impaneled, an independent counsel shall be selected from those licensed to practice law, and who is not a public employee.

A grand jury counsel should have specific guidelines in how they interact with the jurors. The prosecutor in these cases are the only source of legal guidance during these procedures; taking that responsibility out of the hands of the prosecutor and giving the duties of instruction and clarification during the grand jury hearing to an individual in the room, with the authority to step-in, is another layer of transparency to the process. This recommendation removes the ambiguity current in the process of the prosecutor serving as active participant and referee. The prosecutor will be able to set forth a case, offer his opinion on possible charges that apply as determined by the evidence provided; but when questions concerning the law arise from the jurors, those questions, will be answered by the independent counsel. The independent counsel

will also be able to explain from a non-active point of view the possible charges based on law not best trial strategy.

The second recommendation would require the General Assembly or the Supreme Court to expand the rules and to set standards allowing for access to grand jury transcripts. In the state of Indiana, through legislative action, grand jury transcripts are made available to requesting parties, the defendant in most cases. The defendant must request the transcript and must pay for the production of the transcript. Another possibility, not offered by Indiana law, is the ability for those directly impacted by a grand jury outcome to request the transcript of a grand jury. The Commission can recommend to the Supreme Court to actively create a system and procedure for the releasing of transcripts in grand jury cases. If transcripts become available, personal information and testimony could be redacted to prevent the exposing of a witness. Current Ohio law is unclear on how a private citizen, or entity, would be able to receive a transcript of a grand jury hearing. The Ohio Legislative Service Commission and the Ohio Public Defenders Office believes that only through court order, in which the party requesting the transcript is a defendant, can a grand jury transcript be released, and only when there is a question regarding inconsistencies in testimony is the request granted. This recommendation can also offer a sense of transparency to the process.

In New Hampshire, it is written within the Rules and Reference, as determined by the state's Supreme Court, that a transcript may be requested by the Prosecutor, Attorney General or by Court order granted by Superior Judge (Common Pleas Judge) by way of motion, though similar to Ohio, the expansive and clear guidelines of New Hampshire offers more flexibility to the grand jury process.

Though the secrecy component has been married to the operation of the grand jury for over a hundred years, modern realities demand a reviewable apparatus for public scrutiny; especially in cases where there is significant public interest that merits action. For those that feel that justice is being circumvented, for motives viewed as politically expedient, the system must become open. As stated in previous testimony, the grand jury is a tool to help protect those that are unindicted, when it comes to high profile cases, the secrecy of the process and in many cases the evidence presented no longer retains the need to be secret. The current grand jury system in Ohio operates without any mechanism to review the process.

Ohio communities need to feel that the judicial system is trustworthy and that our police force can be held accountable for their actions. In order to offer a more transparent grand jury system and create a reviewable process that lessens the absolute control prosecutors have over grand jurors we must enact these reforms. It is important for a functioning grand jury system and for the wellbeing of our state, that citizens know the judicial process is working fairly, and these reforms will move us towards a more just system.

Chairwoman and members of the committee this completes my testimony. I would be happy to answer any questions.