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Ohio Constitutional Modernization Committee  
 Judicial Branch and Administration of Justice Committee

February 11, 2016 1:30PM Statehouse, Room 017

Sen. Sandra Williams Testimony

Madam Chairwoman and Members of the Judicial Branch and Administration of Justice Committee, thank you for allowing me to offer additional testimony today. As stated in previous testimony, the Ohio Constitution currently requires a grand jury indictment for any felony. It is my firm belief that our grand jury process should be removed from the Ohio constitution which is why Senator Tavares and I introduced SJR 4 which will require the Ohio General Assembly to determine the indictment process. In addition, it is the belief of my constituents that cases involving officer involved shootings should be reviewed through a preliminary hearing process. The public has a significant interest in these types of cases. Due to the high profile nature, in most incidents, the public is already aware of the investigation, negating the secrecy component.

Citizens in Ohio have called into question the process and policies surrounding our grand jury system. The issue of transparency continues to be a major concern. Today, I will focus my comments on four important recommendations that should be made by this committee in an effort to increase transparency.

The first recommendation would require the General Assembly to adopt legislation to require the Ohio Attorney General to appoint a special prosecutor to investigate and bring forth charges, when necessary, in cases involving officer use of lethal force against an unarmed suspect. Currently, these high-profile cases are tried by local prosecutors who have worked closely, on a day-to-day basis in some instance, with the law enforcement officer being investigated. This would also allow for cases where there is a significant question to whether the suspect is both,



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armed and dangerous, during the incident to be reviewed by a special prosecutor. I have introduced this recommendation as Senate Bill 258, which is similar in nature to an Executive Order in the state of New York, by Governor Andrew Cuomo. It is also similar to legislation that was passed in the New York State Assembly last year concerning use of lethal force cases.

Though this legislation will not prevent the use of lethal force, it will help to restore belief in the systems fairness. The public is pleading for accountability, the inherent bias that is present between an officer and the local prosecutor must be addressed. The purpose of this legislation is to remove the perceived bias and establish a standard for who will be empowered to investigate use of lethal force cases when a suspect is unarmed, while also protecting the rights of the accused.

The second 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. An amendment to the state constitution is more practical, removing the constant adjustment to the process that would come with a revised code addition. The idea of a grand jury counsel arose from an amendment to the Hawaii constitution in 1978. In the state of Hawaii's constitution in Article I Section 11 the language states:

**"GRAND JURY COUNSEL**

Section 11. Whenever a grand jury is impaneled, there shall be an independent counsel appointed as provided by law to advise the members of the grand jury regarding matters brought before it. Independent counsel shall be selected from among those persons licensed to practice law by the





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supreme court of the State and shall not be a public employee. The term and compensation for independent counsel shall be as provided by law. [Add Const Con 1978 and election Nov 7, 1978]"

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.

Similar to the constitutional language used in Hawaii, the rules, procedures, and compensation should be determined by law. The independent counsel should be selected by the Presiding Judge of the local Courts of Common Pleas; the length of time the individual will serve should be determined by law.

The third 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



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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.

The fourth and final recommendation would require an independent panel or independent official, appointed by the Chief Justice of the Supreme Court of Ohio, to review grand jury proceedings that have a significant question to whether proper procedures have been followed by the prosecutor. For example, there have been numerous reports questioning the actions of the Cuyahoga County Prosecutor, who did not request the grand jury to vote on whether to indict the officers he was investigating for the Tamir Rice shooting. This action, under this recommendation, would be reviewed by an independent entity.

In cases where there is a significant question to whether the prosecutor is either overcharging, or undercharging suspects, there must be an option to appeal to an independent panel of judicial





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appointees to determine if wrong doing took place. This independent entity will serve as a reviewing body to restore openness to the process. This recommendation would leave the secrecy component in-tack, and should establish a clear precedent for when a case should be reviewed by this independent entity. Not all non-indictment cases should be under review and not all acquittal cases should be under review. When there is a clear question either by the victim, or the victim's closest living relative, whether the prosecution is conducting the investigation in good faith, the prosecutor's actions should be reviewed. Coincidentally, if there is a question from the suspect in the case with regards to overcharging, this entity will be able to offer a level of assurance to those involved.

Though the secrecy component has been married to the operation of the grand jury for over a hundred year, 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.

There are many ways to offer more transparency to our current grand jury system. The appointment of a special prosecutor in cases where the suspect was unarmed or if there was a question to whether the suspect was armed or dangerous; a grand jury counsel be present during hearings to serve as an independent counsel during proceedings; expansive guidelines for when grand jury transcripts should be made available; finally, the recommendation that a grand jury review panel be structured to mediate questions of procedure and misconduct. These recommendations demonstrate reforms that will offer more transparency, remove the current



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unfettered control that prosecutors currently have over the grand jurors, and bring about a reviewable process. The grand jury system in Ohio is in need of drastic reform, this Commission has the power to recommend clear goals and parameters for what a functioning grand jury system should look like. Thank you and I will be happy to answer any questions.