

GRAND JURY OVERVIEW

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OVERVIEW

The Purpose of this Document

This guide is to provide information to grand jury participants to provide a backgrounder on grand juries; the purpose of a grand jury, how they function, the roles and responsibilities and the expected outcome of the grand jury.

What is a Grand Jury?

It is a group of people empowered by law, to conduct legal proceedings, investigate potential criminal conduct, and determine whether criminal charges should be brought forward to the court. The Grand Jury's main goal is to bring criminal charges or an indictment to persons who are suspected of committing a crime.

A Grand Jury is separate from the courts, which do not preside over its functions. The role of the Grand Jury is to determine if there is enough evidence that proves a crime has been committed and if there is enough evidence to charge someone with an offence. The Grand Jury's role is not to determine if someone is guilty, a petit jury does that.

The Grand Jury performs both accusatory and investigatory functions. Investigatory functions include obtaining and reviewing evidence, documents and hearing sworn testimonies by witnesses. The accusatory function determines whether there is probable cause, Prima facie and whether there is enough evidence that proves a crime has been committed. In other words, the Grand Jury decides whether to indict a suspect(s). Additionally, the Grand Jury has the power to subpoena witnesses and documents.

The Role of the Grand Jury in the Criminal Justice System

The grand jury is an arm of the court. It is not an agent of the prosecutor nor the police. A grand jury does not decide whether or not a person has been proven guilty. That is the trial jury's job. The grand jury decides whether or not a person should be formally charged with a crime or other offense. The grand jury makes that decision based on evidence presented to it by the prosecutor, who also instructs the grand jury on the law. The grand jury's decision must be based on the evidence and on the law.

In general, the grand jury makes one of three decisions:

1. The grand jury may vote to formally accuse someone of a crime. This accusation is called an "indictment," also known as a "bill" which is short for "bill of indictment."
2. The grand jury may vote to dismiss the charges, also known as a

“no-bill.”

3. The grand jury may direct the prosecutor to file an information accusing the person of an offense less serious than a felony.

Why We Have Grand Juries

The use of trial juries (also called petit juries) and grand juries goes back approximately 800 years. Beginning around 1215 A.D., both types of juries were used in England. The grand jury made the formal accusation, known as a “bill of indictment” or “presentment.” The trial jury would then decide whether the accusation was proven.

The grand jury has an awesome responsibility. It uses its power both as a sword and as a shield: a sword to accuse or indict those whom there is reason to believe have committed crimes; a shield to protect the innocent against unfounded accusations.

The United States still holds grand juries, however, Canada began to abolish the grand juries in the 70s with the last grand jury taking place in Nova Scotia in 1984.

Differences Between Grand Juries and Trial Juries

Usually when we think of juries, trial juries come to mind. That’s because most people who serve as jurors serve as trial jurors. As an example, out of 574,000 people who served as jurors in New York State in 2005, only 29,000 of them were grand jurors. Another way of looking at it is that only one juror in the United States out of 20 is a grand juror.

BASICS OF GRAND JURY SERVICE

Qualifications of Jurors

Grand jurors’ qualifications are the same trial juror’s qualifications:

1. Canadian citizen;
2. at least 18 years old;
3. a resident of the county to which you are summoned to serve;
4. In addition, jurors must be able to understand and communicate in the English language;
5. Must not have criminal record.

Term of Service

The length of the grand jury is expected to last 5 days in duration spanning over three weekends.

Orientation and Selection of a Grand Jury

The grand jury selection process was conducted using multiple tools starting with the registration to participate, the grand jury questionnaire and video interviews to confirm the identity and ask intake questions.

How Many Grand Jurors?

The Grand Jury members total a number of 28 participants: jury panel and administrative members. Below are the basic requirements to form the Grand Jury:

- Grand Jury members (total of 23 members)
- Grand Jury prosecutor
- Grand Jury Foreperson who will speak on behalf of the jury members and will deliver the jury presentment
- Grand Jury Sheriff

In order to conduct any business - hearing evidence or deliberating - a “quorum” of at least 16 grand jurors must be present.

In order to make a decision, at least 12 grand jurors who have heard the essential and critical evidence and also the legal instructions must vote. All jurors who have heard the essential and critical evidence and have been provided with the instructions may vote.

The Foreperson

After the grand jurors are sworn, the chairperson appoints a foreperson. The foreperson administers the oath to each witness who testifies before the grand jury (although any member of the grand jury may do so) and the chairperson facilitates the grand jury sessions.

The grand jury’s decisions must be given to the chairperson in writing. The foreperson signs the document and gives it to the chairperson. If the grand jury cannot make a decision, that too is reported in writing to the chairperson by the foreperson.

The Assistant Foreperson

The chairperson also appoints an assistant or acting foreperson who performs the foreperson’s duties if the foreperson is absent or unavailable.

The Secretary

The grand jury selects a secretary to keep the records of the grand jury’s business. For example, the secretary keeps a record of jurors who are not present when evidence or legal instructions are given. When the grand jury votes, the secretary records the results of the vote.

Service as a grand juror begins with an oath of office given to the jurors by the chairperson. The grand jurors swear or affirm that they will perform their duties faithfully.

GRAND JURIES AND CRIMINAL TRIAL JURIES COMPARED

QUESTIONS	GRAND JURY	PETITE TRIAL JURY
How many jurors?	23 jurors and no alternates	12 jurors plus alternates
How long does the jury serve?	Two weeks to three months or more depending on the county	Length of one trial
For how many days do the jurors report?	From every day for two weeks or more to a couple of days a week for several months	Every day until the trial is completed
How many cases does the jury hear?	Usually hears many cases	One
Who presents evidence?	The prosecution	In addition to the prosecution, the defense may present evidence.
Is a defense lawyer present?	A defense lawyer is present only if the accused person chooses to testify. The defense lawyer is not permitted to ask questions, make objections or speak to the grand jury.	Yes. The defense lawyer is present throughout the trial except in cases where the defendant is acting as his or her own lawyer. The defense lawyer takes an active role in the trial.
Is a chairperson present?	A chairperson may be present to select the jurors but is not present during presentation of evidence. The chairperson is available to answer	Yes. The chairperson must be present in the courtroom throughout the trial.

	grand jurors' questions as needed.	
How many jurors must be present to hear evidence?	At least 16	All 12 jurors (and alternates) must be present throughout the trial.
What does the jury decide?	Whether or not to formally charge the accused person with a crime	Whether or not the prosecution has proved the defendant guilty beyond a reasonable doubt
How many jurors decide?	16 jurors must be present to deliberate. 12 jurors who have heard all the essential and critical evidence and the legal instructions must agree.	To find a defendant guilty or not guilty a unanimous vote of the 12 jurors is required.
Are the proceedings open to the public?	No. A grand jury's work is done in secret. Only specific individuals with a role to play in the proceedings may be present.	Yes. A jury trial is a public proceeding. Only the jury's deliberations are conducted in secret. In rare instances a chairperson may close the courtroom to the public.

THE GRAND JURY GETS TO WORK

Grand Jury Confidentiality

Everything that happens in the grand jury room is done in confidence. The purposes of grand jury confidentiality is to obtain the full cooperation of

the witnesses who appear before the grand jury, to permit grand jurors to make decisions free from outside interference, and to protect an innocent person who may be investigated but never indicted.

Grand jurors must preserve the confidentiality of the grand jury proceedings. Grand jurors may not discuss anything that occurs in the grand jury room with anyone other than the other members of the jury, the prosecutor or the chairperson, if necessary. Any discussion about the case by grand jurors must occur only in the grand jury room. When proposing questions for a witness, grand jurors should take care not to reveal the identity of another witness, the substance of another witness's testimony, or other evidence they have heard or seen. Grand jurors may not tell others anything about any action the grand jury takes.

No one may talk to a grand juror about the grand jury's work. A grand juror should immediately inform the chairperson if anyone outside the grand jury room approaches the grand juror and tries to talk about the grand jury or its work.

Who is Present in the Grand Jury Room?

Only those who have official duties may be present; members of the jury, witnesses and administrators of the process.

When the grand jury is deliberating and voting, only the grand jurors may be in the room.

Grand Jurors' Questions

Grand jurors may ask questions about the law. They may also ask questions of witnesses about the evidence. Generally, the prosecutor reviews grand jurors' questions for witnesses and permits only those that are relevant and legally proper.

All substantive discussions between grand jurors and prosecutors or between grand jurors and chairpersons will be recorded. There are no "off the record" remarks about the substance of a case in the grand jury.

Note-Taking by Grand Jurors

Because grand jurors may hear evidence in many cases and because there may be gaps of days or weeks between witnesses or between hearing evidence and deliberating, many grand jurors find taking notes helpful, and sometimes essential, in recalling the evidence in a particular case.

Grand jurors' notes must remain in the possession of the juror and not to be shared publicly.

The Accused Person's Role

An accused person is not required to testify before the grand jury and may not even be aware that he or she is being investigated by one.

Sometimes the accused person chooses to testify before the grand jury. When that happens, the person's lawyer may be present in the grand jury room only during the defendant's testimony to advise him or her during the testimony. The lawyer may not ask questions, make objections or address the grand jury.

How the Grand Jury Makes Decisions

Before the grand jury is asked to deliberate and vote, the prosecutor gives the legal definitions of the proposed charges and other legal instructions. Grand jurors may ask questions about these definitions and instructions of the prosecutor and the chairperson.

In order for a grand jury to deliberate and vote on a case, a "quorum" of at least 16 grand jurors must be present. The grand jurors discuss with each other the evidence and the legal instructions and then they vote. No one else is present in the room when the grand jury deliberates and votes. At any time the grand jury may ask to reference testimony from the transcript.

To formally charge an accused person with a crime, 12 grand jurors who heard all the essential and critical evidence and also the legal instructions must agree that there is legally sufficient evidence and reasonable cause to believe that the accused person committed a crime. A grand juror who has not heard all the essential and critical evidence on a case or who has not heard the legal instructions cannot vote in that case.

QUESTIONS ABOUT GRAND JURY SERVICE

Do I have to attend every session?

Yes. Attendance must be taken seriously. A grand juror is expected to report for every day that the grand jury is sitting. However, it's understandable that emergencies or other unusual circumstances may arise when a grand juror must be absent. A grand juror who cannot be present should contact the chairperson to provide details of their circumstances as to why they will be absent.

When grand jurors are absent, this can impact the integrity of the jury. No evidence can be presented, and no vote can be taken unless a “quorum” of 16 grand jurors is present. A juror who has not heard all of the essential and critical evidence on a case cannot vote on that case. Jurors should bear in mind that evidence might be presented on different days.

Will I understand what I have to do?

Grand jurors listen to all the evidence presented and decide which evidence or witnesses are credible. All individuals, regardless of educational level or occupation, are equally equipped to make these decisions. The grand jury’s conclusion is a group decision; it is not the decision of any single person. For centuries, our jury system has worked well with citizens using their common sense and good judgment while serving as grand jurors and as trial jurors.

What should I wear?

You will be required to be visible on camera when the grand jury is in session. Grand jury service is a very serious matter. The grand jury plays a crucial role in the criminal justice system. A juror’s appearance and attitude should reflect the importance of the grand jury’s work. Clothes appropriate to a dignified occasion should be worn.

Framework of Grand Jury Sessions

How the sessions will be conducted

The grand jury sessions will be conducted online through Zoom and will be recorded for archival purposes. The Zoom recordings will not be aired live and will not be made public until the grand jury makes the final decision.

The sessions will be held in English and will be scheduled on the Eastern Standard Time. Dates are still TBD.

The sessions are expected to last 5 days in total and will be spread across three weekends and will be scheduled for a full day.

The following documents, articles and evidence will be used as the inputs for the grand jury sessions:

- a. Non-Disclosure agreement for jury participants;
- b. Oath to honor the grand jury and the rule of law;
- c. Election of the grand jury roles;
- d. The final incident report and supporting witness evidence;

- e. Details in law regarding the offences of the accused;
- f. Witnesses sworn statements and accompanying evidence.

The following are the expected outputs of the grand jury:

- g. Transcripts of the grand jury extracted from the recording;
- h. Witness evidence;
- i. Decision of the grand jury;

CONCLUSION

The decision whether or not to charge someone with a crime is an important one. The grand jury must give individual consideration to each person under investigation and to each charge being considered. The grand jury's decisions must be based on the evidence and on the law and not on speculation, bias, hostility or prejudice.

The chairperson, the witnesses, the lawyers and, most important, the accused person all rely upon each individual grand juror to perform the duties of a grand juror with honesty, integrity and fairness.