

FLORIDA GRAND JURY HANDBOOK

**Approved By The
Florida Supreme Court**



**BRIAN S. KRAMER
STATE ATTORNEY
EIGHTH JUDICIAL CIRCUIT
OF FLORIDA**

INDEX

	<i>PAGE NO.</i>
<i>INTRODUCTION.....</i>	<i>1</i>
<i>WHAT IS A GRAND JURY?</i>	<i>1</i>
<i>TERM OF THE GRAND JURY.....</i>	<i>1</i>
<i>WHO ARE GRAND JURORS?</i>	<i>2</i>
<i>DISQUALIFICATION TO SERVE AS A GRAND OR PETIT JUROR.....</i>	<i>2</i>
<i>FREQUENTLY USED WORDS AND PHRASES.....</i>	<i>2</i>
<i>GRAND JURY AND PETIT JURY DISTINGUISHED.....</i>	<i>3</i>
<i>HISTORY OF THE GRAND JURY.....</i>	<i>3</i>
<i>THE GRAND JURY AS AN ACCUSING AND INVESTIGATIVE BODY</i>	<i>4</i>
<i>OFFICERS OF THE GRAND JURY</i>	<i>5</i>
<i>PROCEDURES</i>	<i>6</i>
<i>PROCEEDINGS OF THE GRAND JURY.....</i>	<i>6</i>
<i>DETERMINATION WHETHER TO RETURN AN INDICTMENT OR A NO TRUE BILL</i>	<i>7</i>
<i>THE STATE ATTORNEY AS LEGAL ADVISOR TO THE GRAND JURY</i>	<i>8</i>
<i>SECRECY OF GRAND JURY PROCEEDINGS.....</i>	<i>8</i>
<i>PROTECTION AND IMMUNITY OF GRAND JURORS.....</i>	<i>8</i>
<i>ON BEING A GRAND JUROR - SOME PRACTICAL SUGGESTIONS</i>	<i>9</i>
<i>CONCLUSION.....</i>	<i>10</i>

INTRODUCTION

"Jury service is one of the highest duties of citizenship, for by it the citizen participates in the administration of justice between man and man and between government and the individual."

Harlan Fisk Stone
Chief Justice
United States Supreme Court

You are one of those citizens who have been selected to perform this "highest duty of citizenship."

In time of peace there is no higher duty a citizen can perform than that of jury service; however, few citizens when called to serve have any understanding of the principles that control the actions of the grand juror.

This handbook is intended only to give the juror a better understanding of the general nature of his or her functions, together with some suggestions as how best to carry them out. The court itself will be the final authority in its instructions to the grand jury. This handbook is not intended in any manner whatever as a substitute for the instructions given by the presiding judge.

WHAT IS A GRAND JURY?

A grand jury is an investigative, reporting and accusing agency of the circuit court. It consists of citizens of a specified number who have been summoned and empaneled by a judge of the circuit court. The grand jury is an agency and an arm of the circuit court and is uniquely independent.

The grand jury is answerable to no person or agency of government except the court that empanels it and, even then, only to the extent that it may exceed its authority and privileges.

TERM OF THE GRAND JURY

The chief judge of each circuit court orders the convening of the grand jury for a term of 6 months. Upon petition of the state attorney or the foreperson of the grand jury acting on behalf of a majority of the grand jurors, the circuit court may extend the term of a grand jury beyond the term in which it was originally empaneled. A grand jury whose term has been extended has the same composition and the same powers and duties it had during its original term. If the term of the grand jury is extended, it shall be extended for a time certain, not to exceed a total of 90 days, and only for the purpose of concluding one or more specified investigative matters initiated during its original term. The grand jury will not be in constant session but will be called in from time to time as necessary.

WHO ARE GRAND JURORS?

Grand Jurors are United States citizens and Florida residents who are at least 18 years of age and who possess a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles, or who execute an affidavit indicating a desire to serve as a juror.

All jurors are selected at random and their names are taken from lists prepared by the Clerk of the Circuit Court.

The process of selecting jurors is done in most counties by the County Commissioners and in some counties by a specially constituted jury commission.

When making up the jury list, the officers compiling it are required to select only citizens they believe to be law-abiding, and of proven integrity, good character, sound judgement and intelligence, and who are neither physically nor mentally infirm.

DISQUALIFICATION TO SERVE AS A GRAND OR PETIT JUROR

Any person who has been convicted of a felony or bribery, perjury, or larceny is disqualified to sit as a juror, unless his civil rights have been restored.

A person under prosecution for any crime is disqualified.

Most government officials are disqualified to serve on a jury.

FREQUENTLY USED WORDS AND PHRASES

Throughout this handbook and during your term as a grand juror certain terms will occur frequently. Some of these are:

Capital Crime. A capital crime is any crime for which the maximum punishment is death.

Circuit Court. The State of Florida is divided into 20 judicial "circuits." Each circuit covers one or more counties. The circuit court is the highest trial court in the circuit.

Defendant. A "defendant" is a person who has been accused of a crime and is defending himself in a court against the criminal charge. The words "defendant" and "accused" are used interchangeably.

Felony. A "felony" is any crime for which the maximum penalty can be one year or more in a state prison. A crime for which the maximum penalty or punishment is not more than a year in the county jail is a misdemeanor.

Indictment; True Bill. A "true bill" is a charge brought by the grand jury accusing a person of a crime. A true bill, when it is filed in court, then becomes an "indictment."

Judge. The judge presiding over the trial is often called or referred to as "the court."

No True Bill. A "no true bill" is a finding by the grand jury that on a given charge no indictment should be filed.

Presentment. A "presentment" is a presentation to the court of a grand jury's report of its actions and recommendations.

State Attorney. Each circuit in the State of Florida has a "state attorney" who, together with assistants, prosecutes all crimes and offenses in the circuit and county courts in his circuit. Some other states refer to this officer as a "district attorney" or "prosecuting attorney."

GRAND JURY AND PETIT JURY DISTINGUISHED

The grand jury consists of up to 21 members. A petit jury, depending upon the type of trial, consists of either 6 or 12 members.

The grand jury and the petit jury have entirely different purposes and functions. A petit jury actually tries a case and renders a verdict of guilty or not guilty after hearing both sides. A grand jury does not try a case on the issue of guilt or innocence. The grand jury rarely hears both sides. Its function is simply to hear witnesses as to a charge of crime, by the State, and to determine whether the person, or persons, so charged should be brought to trial. The grand jury has been called both a sword and a shield of justice - a sword because it is a terror to criminals, a shield because it is protection of the innocent against unjust prosecution.

The tremendous power of the grand jury obviously creates grave and solemn responsibilities to see that these powers are not perverted or abused. A grand jury, being possessed with these tremendous powers and unless motivated by the highest sense of justice, might find indictments not warranted by the evidence and thus become a source of oppression to the citizenry.

Conversely, a misguided grand jury might dismiss charges against those who should be prosecuted. The importance of the grand jury's power is emphasized by the fact that it is one of the most independent bodies known to the law.

HISTORY OF THE GRAND JURY

The grand jury originated more than seven centuries ago in England. It was recognized in the Magna Charta granted by King John of England upon the demand of the people in 1215 A.D. Its present form evolved in the period 1327 to 1377. Its origins can be traced back even further. As

early as 997 A.D. a Danish king, "Ethelred the Unready," charged an investigative body of his reign that it should go about its duty by "accusing no innocent man, and sheltering no guilty one."

This high principle is echoed in the oath that you took as a grand juror:

"You, as grand jurors for _____ County do solemnly swear (or affirm) that you will diligently inquire into all matters put in your charge and you will make true presentments of your findings; unless ordered by a court, you will not disclose the nature or substance of the deliberations of the grand jury, the nature or substance of any testimony or other evidence, the vote of the grand jury, or the statements of the state attorney; you shall not make a presentment against a person because of envy, hatred, or malice, and you shall not fail to make a presentment against a person because of love, fear, or reward. So help you God."

The early colonists brought the grand jury system to this country from England. It has been with us ever since. It is recognized in the Constitution of the United States and in the Constitution of Florida.

THE GRAND JURY AS AN ACCUSING AND INVESTIGATIVE BODY

Our constitution provides that no person shall be brought to trial for a capital crime except upon indictment of a grand jury. This means that no one may be prosecuted for a capital crime except by a vote of the grand jury. Except for capital crimes, the state attorney may initiate all other criminal charges. The grand jury of course may indict for any crime that the evidence justifies.

The wisdom of leaving to the state attorney the bringing of charges as to crimes less than capital crimes and traffic violations is readily apparent. If the grand jury was required to initiate the prosecution of less serious crimes through indictment, the grand jury would be so overwhelmed with complaints that it could not perform its more important duties.

Charges of crime may be brought to your attention in several ways: by the court; by the state attorney; from personal knowledge brought to your body by any member of the grand jury; and, lastly, by private citizens who have a right to be heard by a grand jury in formal session and with the grand jury's consent. The bulk of the grand jury's work probably will be concerned with cases brought to its attention by the state attorney. In most instances a person being considered for indictment by the grand jury will have been held preliminarily on a charge brought before a judge sitting as a committing magistrate, who bound that person over for action by the grand jury. The accused will be either in custody or on bail. Your action, therefore, should be reasonably prompt in either voting an indictment as to the charge or returning a "no true bill."

The grand jury should consult with the state attorney or his assistants in advance of undertaking a formal investigation on the grand jury's own initiative.

A grand juror may not be subject to partisan secret influences. Consequently, no one has the right to approach an individual member of the grand jury in order to persuade him or her, that an indictment should or should not be found. Any individual who wishes to be heard by the grand jury should be referred to the state attorney or to the foreman of the grand jury, and thereafter be heard only in formal session of the grand jury.

It is imperative that you always keep in mind that as a grand juror you are a public official, with the duty of protecting the public by enforcing the law of the land. Therefore, even though you may think a certain law to be unduly harsh or illogical, that should not influence your judgment in carrying out your duties as a grand juror. A citizen has the right to endeavor to change the law. A grand juror, being a public official, has a duty to enforce the law as it exists despite any personal inclinations to the contrary.

The grand jury in addition to the duty of formally indicting those charged with crime has the further important duty of making investigations on its own initiative, which it will report as a "presentment." This duty permits investigation of how public officials are conducting their offices and discharging their public trusts. The grand jury may investigate as to whether public institutions are being properly administered and conducted. It has the power to inspect those institutions and, if necessary, may call before the grand jury those in charge of the operations of public institutions as well as any other person who has information and can testify concerning them. If the grand jury finds that an unlawful, improper or corrupt condition exists, it may recommend a remedy.

The grand jury may not act arbitrarily. Investigations shall not be based upon street rumor, gossip or whim, and the investigations cannot be the subject of a grand jury presentment. The grand jury can only investigate those matters that are within its jurisdiction, geographic and otherwise. The limitations of the grand jury's jurisdiction have been set forth for you by the court in its instructions.

It is important to keep in mind that no individual should be unjustly criticized or held up to scorn or public resentment, particularly when it is remembered that the individual who may be criticized had no opportunity to defend himself or give reply to the charges that may be made against him. A grand juror must keep in mind that the grand jury is the ultimate instrument of justice and should never be subverted to become the vehicle for harassment or oppression.

OFFICERS OF THE GRAND JURY

The judge who presided over the empaneling of the grand jury in his "charge to the grand jury" advised you formally and in great detail as to how the grand jury is organized and functions. In summary, the grand jury consists of 18 or, in some places, of 23 members. Its officers are the foreman, who will preside over the grand jury deliberations to make sure they are carried on in an orderly fashion including overseeing the examination of the witnesses; a vice-foreman, who will preside in the absence of the foreman or if for any reason the foreman is not able to carry out his duty; and the clerk, who will keep a record of the proceedings had before the grand jury and

formally make return of these records to the clerk of the circuit court for safekeeping. The foreman and vice-foreman are appointed by the judge and the clerk is appointed by the foreman. The state attorney or his assistants, will act as the legal advisors to the grand jury. The grand jury also will be provided an official court reporter or recorder to record the testimony before the grand jury.

If the grand jury has its own budget, a treasurer of the grand jury may also be appointed to keep account of all receipts and disbursements made to or from the grand jury budget.

If any question should arise concerning how the grand jury shall operate or function, you may apply to the judge, who will advise you.

PROCEDURES

Not less than 15 members of the grand jury must always be present to constitute a quorum. If less than a quorum exists the proceedings of the grand jury must be halted until a quorum is present. A grand juror, who, because of an emergency, finds that he will be unable to attend a grand jury session should advise the grand jury clerk or foreman immediately.

An affirmative vote of at least 12 members of the grand jury is necessary to the return of a true bill or indictment. Therefore, even though a quorum is present it still requires at least 12 votes of individual members, rather than a mere majority of those present, in order to return a true bill.

PROCEEDINGS OF THE GRAND JURY

Most of the work of the grand jury involves hearing witnesses and determining the sufficiency of evidence on the issue of whether that evidence, without regard to possible defenses, justifies indictment. Generally, the state attorney or his assistants will present and explain the charge to the grand jury and advise as to the witnesses who will be presented, either voluntarily or upon being summoned on the request of the state attorney or the grand jury itself. The grand jury may call any witness it deems appropriate and necessary.

The witnesses will be called one by one and placed under oath to tell the truth. Generally, the state attorney will administer the oath. This oath should be administered in a solemn, dignified and deliberate manner in order to impress upon the witness the seriousness of the situation and his duty to be truthful. The state attorney or his assistants ordinarily will undertake to question the witnesses first. If the foreman, or any member of the grand jury desires to do so, they then also may propound questions. It is suggested, however, that any question first be submitted to the state attorney, who will determine whether the question is appropriate.

A grand juror should keep in mind that he is acting in a judicial capacity and sitting in judgment of evidence before him. For this reason all questioning should be done in a calm, impartial and objective manner without indicating the personal feelings of the person asking the questions.

Occasionally, a witness when brought before the grand jury refuses to testify or answer questions. If this occurs, both the question the witness has refused to answer and the fact of his refusal should be carefully recorded. The matter then should be brought before the court, with a complete copy of the record, in order to obtain from the court a ruling on whether the witness may be compelled to answer the question. In most instances a refusal to answer is based upon the claim against self incrimination. If the answer does tend to incriminate the witness, he cannot be made to answer. If it does not, however, he will be ordered to answer under penalty of contempt.

An accused person cannot be compelled to appear before a grand jury and testify, although one under investigation by the grand jury may appear voluntarily to testify. In that event, however, the grand jury should proceed with great caution and should not permit one under investigation to testify until after first conferring with the state attorney. If an accused, or any person under investigation, is permitted to testify before the grand jury without waiving his constitutional right against self-incrimination, any indictment or presentment would be null and void.

It is clear that the matter of forcing a witness to testify or of giving the accused an opportunity to testify raises complicated legal questions. The advise of the state attorney and, when necessary, a ruling from the court, therefore, always should be sought when these questions arise.

A witness is permitted to be represented before the Grand Jury by one attorney. The attorney may be present for the purpose of advising and consulting with the witness, but may not address the grand jurors, raise objections, or make arguments.

***DETERMINATION WHETHER TO RETURN AN
INDICTMENT OR A NO TRUE BILL***

When the grand jury has heard all necessary or available witnesses and is prepared to deliberate on the issue whether to indict or return a no true bill, the foreman must compel all persons to leave the grand jury room except the members of the grand jury themselves. No other person is permitted in the grand jury room during its deliberations, even including the state attorney, court reporter and interpreter.

When the question of whether to indict or return a no true bill is presented, every grand juror has the right to comment on the evidence and to express his view of the matter. Only when all members of the grand jury have expressed themselves and each has been given the opportunity to be heard should a vote be taken. A vote to return an indictment can be found only upon the affirmative vote of 12 members of the grand jury.

Similar proceedings should be taken when the matter to be discussed is not a criminal charge or indictment but a presentment, as noted above.

If all persons, except the grand jurors, are not removed from the grand jury room during its deliberations, any indictment or presentment would be nullified.

***THE STATE ATTORNEY AS LEGAL
ADVISOR TO THE GRAND JURY***

The court in its charge to the grand jury outlined the part that the state attorney will play in assisting the grand jury. The state attorney will assume responsibility for presenting witnesses and bringing testimony before the grand jury. He generally is experienced in his office, is a public official and is entitled to the confidence and cooperation of the grand jury.

It occurs sometimes, however, that even the best of advisors may be in error. If a difference of opinion arises between the state attorney and the grand jury and it cannot be resolved amicably, the matter should be brought before the presiding judge for a ruling.

SECRECY OF GRAND JURY PROCEEDINGS

Secrecy as to all grand jury proceedings is of the utmost importance. This includes not only the actions upon an indictment or a presentment but even the fact that any such matter was considered, or any witness was called. It is only in this manner that the grand jurors themselves can be protected from pressure by persons who may be involved by the action of the grand jury. Secrecy also is the only protection that a witness may have before a grand jury, which will protect him from being tampered with or intimidated before he testifies at the trial. Further, secrecy may prevent one under indictment, or subject to indictment, from escaping while the issue of indicting him is under consideration. It also should be remembered that secrecy may encourage witnesses to give the grand jury frankly and candidly, any knowledge they may have concerning crime or corruption. Lastly, and of equal importance to all other consideration of secrecy is the fact that an innocent person who has been subjected to a charge but not indicted should be protected from the embarrassment and disgrace attendant upon the making of a charge before a grand jury.

The pledge of secrecy is paramount. It also is permanent.

A grand juror will not communicate to his family, his friends, associates or anyone concerning any matter that takes place in the grand jury room. The only time this veil of secrecy may be lifted is by order of the court after a full hearing, and then only in exceptional cases.

PROTECTION AND IMMUNITY OF GRAND JURORS

A grand juror is fully protected from actions against him by being an independent body answerable to no one except the court that empanels it. No inquiry may be made to learn what a grand juror said or how he may have voted. The law gives the grand juror complete immunity for his official acts. There is only one exception: if a grand juror himself testifies as a witness for the grand jury as to a commission of a crime and his testimony is perjured, he could be prosecuted for that perjury. This complete protection for the official acts obviously is vital to the operation of the

grand jury and points up that grand jurors should be citizens of unquestionable integrity and high character.

ON BEING A GRAND JUROR - SOME PRACTICAL SUGGESTIONS

Attend all sessions of the grand jury. Your attendance should be regular and on time. If you are unable to attend a session and wish to be excused, obtain permission from the foreman or the State Attorney's Office. The unexpected lack of a quorum could cause a great loss of money, as well as the time of the jurors, the authorities and the witnesses. The public is depending on you.

Pay close attention to testimony given and the evidence presented.

Be courteous to the witnesses and your fellow jurors.

Fix the time and place of your meetings, keeping in mind the convenience of the public and the witnesses as well as yourselves and the state attorney.

Do not interrupt until the state attorney has finished his questioning of the witness. In all probability the evidence you are interested in will be brought out by his questions.

Listen to the opinions of your fellow jurors, but maintain your own independent viewpoint.

Be independent, but not obstinate.

Be absolutely fair. You are acting as a judge. You therefore must be guided by your own good conscience and sense of justice.

All jurors have an equal voice in determining whether an indictment shall be returned. Each juror has a right to state his reasons.

Do not remain silent when the case is under discussion and then, after a decision has been made, criticize the acts of the grand jury.

A reckless grand jury is as bad as a weak grand jury.

Do not attempt to investigate matters beyond the province of the grand jury, or merely because someone suggested an investigation.

Above all, refrain from discussing grand jury matters with fellow jurors outside of the grand jury room.

Each juror has a duty and responsibility equal to yours. Each juror is entitled to be satisfied with the evidence. If others wish to pursue a matter further, no effort should be made to dismiss the witness or shut off proper discussion.

CONCLUSION

Your membership on the grand jury is an honor. You are one of the few citizens who have been called upon to perform this service. Your service as a grand juror will be a source of pride and satisfaction to you if you devote to it the responsible participation and dedicated service that the grand jury is entitled to expect from its members.