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Guidelines

Practical Suggestions for Grand Jurors

- Attend the sessions regularly and on time.
- If you are unable to attend, be sure to notify the foreperson or the district attorney's office as the unexpected lack of a quorum causes great inconvenience.
- The oath should be administered to witnesses in an impressive manner, so that they will realize that it is a serious, judicial hearing, and they must tell the truth.
- Pay close attention to the testimony given and the evidence presented. The reputation and freedom of someone depends on what is being told.
- Be courteous to the witnesses and to your fellow jurors.
- Listen to the evidence and opinions of your fellow jurors but don't be a rubber stamp.
- Be independent but not obstinate.
- All jurors have an equal voice in determining an indictment and each juror has the right to state his reasons for his or her views.
- Express your opinions but don't be dictatorial. Every juror has a right to his or her own opinions. You may try to persuade other jurors, but do not try to force him or her to change his or her mind and agree with you. He or she might be right.
- Do not discuss cases with your fellow jurors *or anyone else* outside the jury room.
- Be absolutely fair. Every matter which you consider and every person who appears before you should be given equal treatment regardless of gender, racial or ethnic background, disability, sexual preference, age or ability to speak English.
- Wait until the district attorney, assistants, witness, interpreter or court reporter has left the room before you begin your deliberations or vote on an indictment or special presentment.
- A reckless grand jury can do as much harm to the community and to law enforcement as a weak grand jury.
- Your membership on the grand jury is a high honor. You are among a relatively small number of citizens of your community who are chosen to serve. Your response should be devoted, trustworthy participation in performing the duties of the grand jury. A humorous, but wise quotation attempting to summarize grand jury service is that "The grand jury should know the difference between sin and crime and act accordingly."

While the grand jury may appear to have considerable power and authority, the manner in which it can exercise its power and authority is strictly regulated by law and limited by the amount of time and resources that are available. Experience has taught that no single grand jury can do everything that the law allows them to do.

Glossary

Throughout your service as a grand juror, you will hear references to words and phrases which have particular meanings under Georgia law. Some of the more common words and phrases are defined below.

Accusation

A formal charge against a person, alleging that he has committed a crime. In Georgia, the term "accusation" is used to describe a legal document used in lieu of an indictment or special presentment in misdemeanor cases and certain felony cases.

Capital Felony

A criminal offense for which a sentence of death may be imposed.

Felony

A crime punishable by death, imprisonment for life, life without parole or for a term of more than 12 months.

General Presentment

A written report to the court by the grand jury, generally issued at the end of the term, in which the grand jury summarizes its activities and makes findings and recommendations which are authorized in conjunction with its non-criminal duties.

Indictment

The document in which the grand jury charges that there is probable cause to believe that the person named therein has committed the crime specified therein. Prior to its having been considered by the grand jury, a proposed indictment may be referred to as a "bill of indictment."

Juvenile Court

The court which has jurisdiction over children under the age of 17 who are alleged to be delinquent, unruly, deprived or mentally ill.

Malicious Prosecution

A criminal prosecution initiated by a person for malice or spite when probable cause does not exist to believe that the defendant committed the offense charged.

Magistrate

A judge of a court who is authorized to issue arrest and search warrants, and who has jurisdiction to conduct commitment hearings and try certain misdemeanor and ordinance violations and civil cases. In Georgia, judges of the magistrates courts and municipal courts are referred to as magistrates.

Misdemeanor

A crime, other than a felony, punishable by imprisonment for 12 months or less, or a fine, or both.

No Bill

After hearing the evidence, a finding made on a bill of indictment by the grand jury that the charges against the accused are groundless or the evidence is insufficient to present an issue for trial.

Person

By law, person can mean an individual, a corporation, an association or a partnership.

Probable Cause

The term used to describe a finding by the grand jury that the facts would justify a person of reasonable caution to believe that an offense has been committed. Probable cause does not involve a certainty, but requires merely a probability, something more than a mere suspicion or possibility.

Prosecutor

In Georgia, the person who initiates a prosecution by making an affidavit before a magistrate or judge charging a named person with the commission of an offense which results in an arrest warrant being issued or an indictment or accusation being returned.

Special Presentment

A legal document which is substantially the same as an indictment except that no person is named as the prosecutor because, in theory, the offense charged is based on the grand jury's own knowledge or observation and not upon an arrest warrant.

State Court

A court established by the General Assembly in 66 counties having concurrent jurisdiction with the superior court over civil cases and misdemeanors.

Statute of Limitations

The time limit, fixed by law, within which a criminal prosecution must be commenced by the filing of an indictment, special presentment or accusation.

In Georgia, the statutes of limitation are:

- Murder - no statute of limitation;
- Forcible rape - 15 years;
- Other crimes punishable by death or life imprisonment - 7 years;
- RICO - 5 years;
- All other felonies - 4 years, unless the victim is under age 18 at the time the crime is committed, in which case the crime must be indicted within seven years;
- Misdemeanors - 2 years.

Under certain circumstances, the statute of limitation can be extended. Some of these circumstances include: (1) The person committing the crime is unknown; (2) the accused is a fugitive; (3) the victim is a child under the age of 16.; (4) the accused is a government employee charged with theft of government property; or (5) the accused is a guardian or a trustee charged with theft or conversion of the ward or beneficiary's property.

Superior Court

A court established by the Constitution of Georgia having exclusive jurisdiction over cases involving divorce, equity, felonies, and titles to land, and having concurrent jurisdiction over other civil and criminal cases.

Term of Court

This phrase is used to describe the period of time, usually expressed in months, during which a court must hold court at least once within the county and the time limit in which a particular grand jury will sit. In Georgia, the terms of court are set by the legislature and vary from county to county from two months to six months.

True Bill

The endorsement made by a grand jury on an indictment or special presentment when they find there is probable cause to believe that the accused committed the alleged act.

History

Service on a grand jury will provide you with a unique opportunity to participate in the administration of justice. In order to better appreciate the functions of the grand jury today, it is necessary to understand a little about its history and evolution.

While there may have been a similar body in Athens, Greece before the first century A.D. and in 10th century Scandinavia, the direct ancestor of the modern grand jury is generally accepted to date from the 1166 A.D. decree of King Henry II of England. This decree required 12 knights or other freemen of every hundred and four men of every township to submit accusations of murder, robbery, larceny and harboring of criminals. Under the Norman and Plantagenet kings, judges were required to ride a circuit to hold court in the outlying counties. Because the majority of criminal cases were brought by private citizens, many cases were found to be completely baseless. The panel of knights and freemen called for in Henry II's decree provided a ready screening device to weed out baseless cases before they went to trial. This panel became known as the great or, in Norman French, the "grand" jury (the trial jury, by contrast, is the small or ordinary, the "petit" jury). Because they were also charged by the King with discovering what crimes had been committed in the county since the previous term of court, they were also called the "Grand Inquest."

While during the 13th and 14th centuries the members of the grand jury formed the whole or part of the petit jury, eventually, a total separation of the grand and petit juries evolved. By this time the primary function of the grand jury emerged: that is, to look at the prosecutor's evidence and determine if there was probable cause for indictment. In addition to acting as a screening device, the grand jury also provided citizens a degree of local control over criminal prosecutions. Few criminal cases could be presented to the courts unless at least 12 of the grand jurors in the locality where the crime had occurred concurred in a true bill. This procedural safeguard, guaranteed to all Englishmen by the Magna Charta, provided protection against attempts by the King and nobles to persecute citizens through the use of unwarranted criminal charges.

When English colonists began settling in North America, they continued to follow the English legal system which included the grand jury. It was during this period that grand juries acquired many administrative duties outside the criminal law. In Georgia, the grand jury is older than the superior courts, the first grand jury having been convened in 1735 in Savannah during the Trustee period. Prior to the American Revolution, grand juries in Georgia and the other colonies played a significant role in opposing British policies.

1166 A.D.
The ancestor of the modern grand jury is formed with King Henry II's decree that twelve knights or other freemen of every hundred, and four men of every township, must submit accusations of murder, robbery, larceny and harboring of criminals.

1200 - 1300
"Petit" or trial juries and grand juries become separate entities.

1600s - 1700s
English colonists begin settling in North America and continue to follow the English legal system which includes the grand jury. The grand jury also acquires administrative duties outside criminal law.

1735
The first grand jury in Georgia convenes in Savannah during the Trustee Period.

1775 - 1783
American Revolution

1785 - 1795
Grand juries are instrumental in alerting the citizens to the Yazoo Land fraud, a scandal in which four companies bribed and intimidated a bill through the assembly. The bill made investors rich by selling them vast amounts of land at low prices while higher bids for the same land were ignored.

After the Revolutionary War, the grand jury continued to be a part of the judicial systems in the 13 original states. While no mention was made of the grand jury in the Constitution of the United States when it was proposed for ratification in 1787, provisions for the grand jury were taken up by Congress when it met for the first time in 1789. In the Fifth Amendment to the Constitution of the United States, it was provided that:

Fifth Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

In Georgia, grand juries played an important role in the development of the State. The routes for many of our early roads were suggested by grand juries in their general presentments and grand juries were among the first public bodies to alert the citizens of Georgia to the infamous Yazoo Land Fraud. Grand juries also were instrumental in the calling of the Constitutional Convention of 1877.

Beginning in the late 1800s, questions about the grand jury began to appear. Critics characterized grand juries as "an expensive and cumbersome relic that had outlived its usefulness" and by the early part of the 20th century many of the Western states had abolished or limited the use of the grand jury.

In Georgia, concern that some grand juries were abusing their authority to review local government led the legislature in 1869 to provide that "the duties of a grand jury shall be confined to such matters and things as by law it is required to perform." In addition, courts began to impose limits on the contents of grand jury presentments, holding that a grand jury could not accuse someone of misconduct except by indictment or special presentment.

In 1974, the General Assembly authorized the Superior Courts in designated urban counties to empanel special purpose grand juries if requested to do so by an elected public official. In 1982, the number of counties authorized special purpose grand juries was expanded so that the law now applies to any county with a population of 70,000 or more according to most recent census. Special purpose grand juries are similar to regular grand juries in terms of the procedures that must be followed for the selection of grand jurors and the procedures to be followed. However they are not limited in their service to a single term of court but may sit until the judge assigned to supervise the grand jury decides the grand jury has completed its investigation.

The role of the grand jury continues to evolve to meet the demands of society. While duties such as inspecting and recommending roads have passed into history, new duties have taken their place. These will be discussed in greater detail in the sections that follow.

While the grand jury remains a powerful institution through which ordinary citizens can participate directly in local government, its powers are not unlimited. Within the limits established by law, it is capable of providing a wealth of benefits to all of the citizens of your community.

1787
The Constitution of the United States is proposed but makes no mention of grand juries.

1789
Congress meets for the first time and provisions for the grand jury are taken up by instituting the Fifth Amendment, which states that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

1869
In response to a concern that some grand juries were abusing their authority to review local government, the Georgia legislature provides that "the duties of a grand jury shall be confined to such matters and things by law it is required to perform."

1887
Grand juries are instrumental in calling the *Constitutional Convention of 1887.*

20TH CENTURY - PRESENT
The role of the grand jury continues to evolve to meet the ever-changing demands of society.

Selection & Administration

Many people who receive a notice or summons informing them that they have been selected to serve on the grand jury wonder, "How did I get selected for this?" To understand how you came to be selected, we first must examine who is qualified for service on the grand jury and then how grand jurors are selected.

Qualifications

All citizens of Georgia may serve on a grand jury if:

- They are a citizen of the United States;
- They are 18 years of age or older;
- They are not incompetent because of mental illness or retardation;
- They are a current resident of the county and have resided in the county for six months prior to serving; and
- They are the most experienced, intelligent and upright of persons.

Any citizen who meets these basic requirements is eligible to be selected for grand jury duty unless he or she:

- Has been convicted of a felony in a state or federal court and has not been pardoned or had his or her civil rights restored; or
- Currently holds or has, within the previous two years, held an elected office in state or local government; or
- Has served as a grand juror in a state court at the preceding term of court.

Individuals who are 70 years old or older may request, in writing, to have their names removed from the jury lists. For further information on this, you should ask the district attorney.

Selection

All jurors are selected from a list of the qualified residents of the county. This list is developed by the Board of Jury Commissioners so that it reflects a fair cross-section of the citizens of the county. The primary sources for this list are driver's license records and voter registrations, but the commissioners may use any other source to ensure that the jury list fairly represents the population of the county.

The jury list is revised at least every two years. From this list the commissioners develop a second list containing names of the most intelligent and upright citizens of the community from which the grand jurors will be selected.

Prior to each term of court, the grand jury list is used to select the names of those citizens who will be summoned for service on the grand jury. This can be done either manually or by computer, depending on the county.

In counties which rely on a manual system, the commissioners take names from the grand jury list and place them on slips of paper which are put into the grand jury box. The box is brought into open court where a judge of superior court draws between 18 and 75 names of persons to be summoned for duty on the grand jury.

In counties which use a mechanical or computerized jury selection system, prior to each term, 18 to 75 names from the grand jury list are selected at random by the computer in accordance with local court rules.

After the prospective grand jurors' names have been selected, the Clerk of the Superior Court is responsible for notifying the prospective grand jurors when and where to report. This can be done either by mailing you a notice or summons or by having it delivered to your residence by the Sheriff. It should be noted that willful failure to report for grand jury service is contempt of court and is punishable by fine.

Organizing and Empaneling the Grand Jury

Qualifying the Panel and Excusing Individuals From Service

At the time and date specified in the summons (usually the first day of the term), those selected for service on the grand jury assemble at the county courthouse (or other location indicated in the summons). At that time, a judge of the superior court or someone designated by the judge will usually ask the assembled jurors if any of them are disqualified from serving. **It is vital that you advise the court at this time if you have any reason to believe you may be disqualified. Failure to do so can invalidate the work of the grand jury during the term and require those criminal cases to be reindicted.** The reasons which would disqualify someone

from serving on the grand jury are on page 14. The most common reason why someone is disqualified from serving on the grand jury is that they have moved out of the county. On page 20 of this handbook, we will discuss those instances when a grand juror may be disqualified in a particular case or cases. (**Note:** A grand juror who is disqualified in a particular case can hear other cases.)

At the same time, the judge (or the person designated by the judge) will ask if there is anyone who is otherwise unable to serve as a grand juror for that term because he or she will "be engaged . . . in work necessary to the public health, safety or good order" or for other good cause. Good cause can include being a full-time student at a college or technical school, being the "primary caregiver . . . of a child six years of age or younger," being the "primary teacher in a home study program," being the "primary unpaid caregiver" for a person with serious physical or cognitive limitations, or being a member, or the spouse of a member, of the armed forces (including the National Guard and Reserves) who deployed more than "at least 50 miles from his or her home." In these cases, the judge (or a person designated by the judge), has the discretion on an individual basis to defer such person's jury service to another time. By law, no one can be excused totally from jury service unless he or she is permanently mentally or physically disabled to the extent that they cannot perform the essential functions of a juror, even with reasonable accommodations.

After these persons are excused, the court will usually select the first 16 to 23 persons whose names are on the list to serve as members of the grand jury and up to three alternate grand jurors. Those selected as alternates may be called on to serve if a member of the grand jury is disqualified or is absent for any reason. They also may serve on any inspection or examination committee in which case they have the same authority as other members of the grand jury. However, an alternate should not be present with the grand jury when criminal cases are being considered unless one of the members is disqualified or absent.

Normally, only one grand jury will be empaneled each term of court. However, the law allows the court to empanel additional grand juries if the public interest requires it.

Length of Service as Grand Jurors

Those individuals selected as a grand juror or an alternate will normally serve for the full term of court unless they are discharged from further service by the court. Because the length of a term of court varies from county to county, the judge will usually advise you as part of the charge how long you are expected to serve. This does not mean that you will be in constant session throughout the term, but you may be called in from time to time as necessary. The district attorney will discuss the schedule for grand jury meetings with you during your first session.

Selection of Foreperson and Administration of the Oath

After the judge has selected the 16 to 23 persons and up to three alternates to serve on the grand jury, the remaining prospective jurors usually will be excused. The judge will either appoint the foreperson or direct that the grand jurors elect one of their members as foreperson (see p. 18) and the foreperson and other grand jurors will be administered the oath of office.

Grand Jury Oath of Office

"You, as foreperson [or member] of the grand jury for the county of ____ _____, shall diligently inquire and true presentment make of all such matters and things as shall be given you in the court's charge or shall come to your knowledge touching the present service; and you shall keep the deliberations of the grand jury secret unless called upon to give evidence thereof in some court of law in this State. You shall present no one from envy, hatred, or malice, nor shall you leave anyone unpresented from fear, favor, affection, reward, or the hope thereof, but you shall present all things truly and as they come to your knowledge. So help you God."

This oath, which is over 300 years old, indicates, in a general sense, both the duties and limitations of the grand jury. In taking the oath, each grand juror should understand the tremendous responsibility to the community which they assume upon being sworn into office. You pledge yourself to act on behalf of all of the citizens of your county without "envy, hatred, . . . malice, . . . fear, favor, affection [or] hope [of reward]." By taking this oath, you become, for this term of superior court, a public officer. And while you have immunity from civil suit for your official acts, violation of your oath or misconduct as a grand juror can subject you to contempt of court or criminal prosecution with penalties of imprisonment for up to five years, fines up to $1,000 or both. The district attorney can provide you with additional information about this.

After the grand jury has been sworn, the following oath is administered to the bailiff whose job it is to attend to the grand jury:

Bailiff Oath

"You do solemnly swear that you will diligently attend the grand jury during the present term and carefully deliver to that body all such bills of indictment or other things as shall be sent to them by the court without alteration, and as carefully return all such as shall be sent by that body to the court. So help you God."

The Court's Charge to the Grand Jury

After you have been administered your oath of office and the bailiff has been sworn, the superior court judge will "charge" the grand jury. In the charge, the judge will explain your duties, powers and responsibilities as grand jurors in both criminal and civil matters (see pages 21 and 25-33 for more information on these). The judge may also direct the grand jury to investigate other matters of public interest. Following the judge's charge, the grand jurors will usually retire to the grand jury room to begin their duties.

Grand Jury Organization and Operations

The first task facing any new grand jury is to develop their own internal structure and to identify the other individuals who they will interact with throughout the term.

Foreperson

The foreperson is the presiding officer of the grand jury and signs all indictments and presentments. As indicated on page 17, the superior court judge may appoint the foreperson, however, in many circuits, the judge will allow the grand jury to elect its foreperson. The foreperson may administer the oath to and question witnesses.

Other Officers

In many counties, the court may appoint or the grand jury elect an *assistant* or *deputy foreperson* to preside at grand jury meetings if the foreperson will be absent for any reason. Other officers commonly found in the grand jury are a *clerk* and a *doorkeeper*.

The *clerk* is usually charged with keeping the records of the grand jury such as attendance and a record of matters considered by the grand jury. The *clerk* should also check each indictment or special presentment after the grand jury has voted and verify that the action taken is properly recorded on the backing and has been signed by the foreperson. The *doorkeeper's* job is to guard the door and notify the bailiff when the grand jury requires anything.

Bailiff

The *bailiff* is an officer of the court, appointed by the sheriff and assigned to attend the grand jury. The *bailiff* assigned to the grand jury is charged with ensuring that unauthorized persons do not enter the grand jury room when the grand jury is in session. When properly sworn, as discussed on page 18, the *bailiff* is authorized to deliver documents from the court to the grand jury and to make the return of indictments and special presentments which have been either "true billed" or "no billed" to the court so that they can be docketed.

The Grand Jury's Legal Advisor – The District Attorney

By law, the district attorney is the legal advisor for the grand jury. In so providing, the legislature recognized that most citizens who serve on the grand jury are unfamiliar with the many technicalities of the law. The district attorney is responsible for advising you on any questions of law or procedure which you may have as a grand jury. In 1973, the Georgia Supreme Court held that the grand jury must rely on the district attorney for legal advice and may not employ any other lawyer for that purpose. Assisting the district attorney in carrying out these duties will be assistant district attorneys and other employees of his or her office.

In addition to serving as legal advisor to the grand jury, the district attorney and his or her staff are counsel for the State in all criminal cases which will be brought before you. The district attorney's office will prepare the cases for presentation to the grand jury and subpoena necessary witnesses. The district attorney and assistant district attorneys are authorized to be present with the grand jury when cases are being presented. They may also administer the oath to and question witnesses before the grand jury. Any presentments or indictments which the grand jury requests be drawn will be prepared by the district attorney's office.

Other Persons Authorized to Assist the Grand Jury

If a witness is to testify before the grand jury does not speak or understand English or is hearing impaired, the court will appoint an *interpreter* to interpret the proceedings and the witness' testimony. Additionally, in counties with a population of 150,000 or more, the district attorney may provide a *stenographer* to record and transcribe the testimony of witnesses before the grand jury.

When requested by the grand jury the foreperson or clerk of the previous grand jury may review and report on actions taken by that grand jury. In such a case, they are entitled to the same compensation as members of the present grand jury.

When carrying out its civil functions, the grand jury may form committees to conduct inspections or investigations. They may also appoint a citizen of the county to provide technical expertise to either the grand jury or the committee. This will be discussed in greater detail on page 29.

Meetings and Quorum

As indicated on page 16, meetings of the grand jury are scheduled based on the requirements of your court. However, in order for the grand jury to hear evidence or take any official action, at least 16 qualified members must be present in the grand jury room.

Disqualification of Grand Jurors in Particular Cases

On page 14, we mentioned that certain individuals cannot serve on the grand jury. However, there are circumstances when a grand juror may be disqualified from serving for a particular case or cases because of his or her relationship to either the victim or the accused. For obvious reasons, a grand juror who was either the victim of or a defendant in a crime being considered by the grand jury is disqualified.

A grand juror who is related by blood or marriage within the sixth degree to a person under investigation by the grand jury or any party interested in the results of the case is also disqualified. Normally, in addition to the accused, the victim and the prosecutor are the "interested parties" but a grand juror who contributed to a fund to help prosecute the accused has also been held to be an interested party. The chart on page 22 shows who are related within the sixth degree by blood or marriage. "**X**" represents the grand juror.

If, at any point during your term, you have any concern that you, or any other member of the grand jury may be disqualified in a particular case, please speak to the district attorney or an assistant district attorney. If a grand juror deliberates or votes in a case in which they are disqualified, the court may be forced to dismiss any resulting indictment or special presentment.

Compensation

The amount and manner in which you will be compensated for your service on the grand jury varies from county to county. As page 32 will indicate, the grand jury empaneled at the fall term of court has the duty to recommend the amount which jurors and bailiffs are paid.

Secrecy of Grand Jury Proceedings

The oath you take as a grand juror requires that you ***"shall keep the deliberations of the grand jury secret unless called upon to give evidence thereof in some court of law of this state."*** There are important reasons behind this requirement as secrecy protects witnesses from intimidation or tampering and makes it more difficult for a witness to avoid subpoena, hide or destroy evidence or for a defendant to evade arrest. Secrecy not only aids in the investigation, but is of particular importance to an accused who is later cleared by a "no bill."

To ensure secrecy, the law limits those who may be present in the grand jury room to the grand jurors, the district attorney and his or her assistants, a stenographer or interpreter when authorized, and generally, only the witness who is testifying. While the grand jurors are deliberating and voting on a case, absolutely no one except the grand jurors may be present.

By law in Georgia, communications among grand jurors are excluded from evidence as a matter of public policy. However, you may disclose anything which occurred during your term if ordered to do so by a judge of a court of record in this State.

Relation Within the 6th Degree

"X" Represents the Grand Juror	
First Degree	Parents and children of **x**
Second Degree	Grandparents, brothers and sisters of **x**, and grandchildren of **x**
Third Degree	Uncles, aunts, nephews, nieces, great-grandparents of **x**, and great-grandchildren of **x**
Fourth Degree	First cousins, great-uncles, great-aunts, great-great-grandparents, great-nephews and nieces of **x**, and great-great-grandchildren of **x**
Fifth Degree	Great-great-uncles and aunts, the children of a first cousin, the children of great-uncles or aunts, great-great-great-grandparents, great-great nephews and nieces of **x**, and great-great-great-grandchildren of **x**
Sixth Degree	Great-great-great-uncles and aunts, second cousins, first cousins twice removed (being the children of the children of a first cousin), children of great-great-great-great-grandparents, and great-great-great-nephews and nieces of **x**

This chart shows who is related within the sixth degree, by blood or marriage. A grand juror who is related by blood or marriage within the sixth degree to a person under investigation by the grand jury or any party interested in the results of the case is disqualified.

Criminal or Accusatory Function

Because Georgia law requires that the grand jury must find a "true bill" in most felony cases before the case may be brought to trial, a substantial amount of your time will be spent inquiring into the existence of possible criminal conduct. It should be noted that not every criminal case requires action by the grand jury. Indictment by the grand jury is not required for misdemeanors and certain felony offenses and in all but capital felonies, the defendant may waive indictment by the grand jury. In these cases, the prosecuting attorney may file an accusation, or in some instances a citation, directly with the court. In addition, indictments are not used in cases when the accused is under 17 years of age and the case is brought in juvenile court.

How Cases Get to the Grand Jury

Most cases which will be brought before you begin with a crime being reported to or discovered by a law enforcement agency such as the sheriff's department, police department, or a state law enforcement agency. Following an investigation, a law enforcement officer will obtain a warrant for the arrest of the person believed to have committed the crime.

In other cases, a private individual will have obtained an arrest warrant from a magistrate accusing a person of a crime. In these cases, there often has been little or no investigation by law enforcement.

After the accused is arrested, he or she will be brought before a magistrate, who will decide if the accused should be released on bail or held in custody. At that time, the accused may ask for a commitment hearing or allow the case to be bound over to superior court. If a commitment hearing is held, a magistrate will consider the facts in the case and determine if there is sufficient reason to believe that the accused committed the crime charged. If the magistrate determines that there is, the case will be bound over to the grand jury. After receiving and reviewing the warrants, police reports and interviewing key witnesses, the district attorney's office will prepare an indictment or special presentment for presentation to you.

In addition to cases which are bound over, the district attorney's office can bring an indictment or special presentment before you for investigation where the accused has not been arrested. Finally, if you or another member of the grand jury has personal knowledge that a crime has been committed for which the statute of limitations has not expired, the grand jury may request that the district attorney prepare an indictment or special presentment so the case may be considered by the grand jury.

It is the duty of the grand jury in criminal cases to determine from the evidence presented if there is probable cause to believe that a crime has been committed and that the person or persons named in the indictment or special presentment committed it.

Procedure in Criminal Cases

Preparation of the Case for Presentation to the Grand Jury

Prior to each meeting of the grand jury, the district attorney's office will prepare an indictment or special presentment for each case which is to be presented. In most cases, this is done from the arrest warrant and any reports prepared by the investigating officers and the crime laboratory. In addition, the district attorney's office will cause subpoenas to be issued by the clerk for any witnesses or physical evidence which will be needed in order to establish that probable cause exists.

Presentation of the Case

When the grand jury meets, the district attorney or an assistant district attorney designated by the district attorney will either read or explain the proposed indictment (sometimes referred to as a "bill of indictment") to the grand jury and will acquaint them with the witnesses who will testify. This is done to allow the grand jurors to know who the parties to the case will be in the event that one or more members are disqualified (see p. 20 and 22).

After explaining the indictment, the district attorney will begin calling the witnesses. These witnesses may appear voluntarily, at the request of the grand jury or the district attorney, or they may be ordered to appear by serving them with subpoena. Each witness who appears before the grand jury in a criminal case must be administered the following oath by the district attorney, an assistant district attorney, or the foreperson:

Witness Oath

"Do you solemnly swear or affirm that the evidence you shall give the grand jury on this bill of indictment or presentment shall be the truth, the whole truth, and nothing but the truth. So help you God."

If a witness fails to take the required oath, his or her testimony would not be evidence and any indictment or presentment returned on this testimony would be invalid. In addition, if the oath administered to the witness is not substantially the same as the statutory oath and the testimony given should prove to be false, the witness cannot be prosecuted for perjury.

The witness will normally be questioned first by the district attorney or an assistant district attorney, then by the foreperson, and finally, if desired, by any other members of the grand jury. If you have a question which you would like to ask a witness but are in doubt whether or not it is a proper question, the advice of the prosecuting attorney presenting the case should be sought. The prosecuting attorney may also advise the grand jury about what evidence you may consider in your deliberations.

In most cases, the only witnesses who will be scheduled to appear before the grand jury will be the law enforcement officers who have investigated the cases. These officers may testify as to statements made to law enforcement officers by the suspects or by witnesses to the crime and to the results of any laboratory tests performed on physical evidence in the case. Even though such testimony is considered to be hearsay (an unsworn, out-of-court statement), it can be sufficient evidence on which to return an indictment. It is important to remember that at least one witness must be sworn and give testimony as to each indictment or special presentment in order for the indictment or special presentment to be valid.

As the case is being presented, each grand juror should be attentive to the testimony and evidence being presented. If it should appear that there is a difference between the testimony and the facts alleged in the indictment, this should be called to the attention of the district attorney or the assistant handling the case. (Example: the indictment alleges that John Smith was robbed, but the testimony is that Jane Smith was the victim.)

Deliberations and Voting

After the evidence is presented the prosecuting attorney will leave the room and the grand jury will be given the opportunity to discuss the case in private and to vote whether the bill of indictment is to be returned as a "true bill" or a "no bill." They may also defer taking action on the case by tabling it, holding the case for further investigation, or request that additional or different charges be presented to them.

In considering an indictment, it is important that you remember that the function of the grand jury is not to try the merits of the case but rather to determine if probable cause exists. It would be difficult, if not impossible, to determine a case on its merits as the defendant does not have the right to appear before the grand jury, to cross-examine witnesses or to present evidence on his or her own behalf. A defendant may not be compelled to appear and testify before the grand jury.

The law requires that not less than 16 grand jurors actually participate in voting on an indictment or special presentment. If 12 or more grand jurors vote in favor of the indictment, then the foreperson or clerk should enter the words "true bill" in the appropriate space on the indictment. The indictment should also show on its face the names of all the grand jurors who voted on the indictment (strike only the names of those who did not participate).

If, however, the grand jurors vote that there is insufficient evidence to believe that the person named in the indictment committed the act charged, then the foreperson or clerk would enter the words "no bill" in the appropriate space on the indictment. If in finding a "no bill," the grand jury concludes that the indictment was unfounded or malicious, the grand jury may endorse the indictment as a "malicious

prosecution," in which case the person instigating the prosecution (the "prosecutor") will be compelled to pay all costs for bringing the unfounded charge.

If two successive grand juries should make two returns of "no bill" on the same charge, further prosecution of the same offense is barred, unless the "no bill" was procured by the fraudulent conduct of the person charged in the indictment. Whatever entry is made on the indictment, it must be signed by the foreperson or acting foreperson.

Actions Taken if the Indictment Is "True Billed"

If a "true bill" is found, the indictment must be returned in open court, either by the entire grand jury or delivered by the grand jury to the sworn grand jury bailiff to be returned in open court. In order for the return to be made in "open court" it must be made "in the courtroom or place where court was being held open to the public with the judge and clerk present." If an indictment is not returned in open court or if it is returned by anyone other than the grand jury or bailiff, the defendant can have the indictment dismissed.

If court has recessed for the day or the judge and clerk are not available when the grand jury is ready to have an indictment returned, the grand jury bailiff may hold the indictment overnight and return it the next day when court opens.

After a "true bill" has been returned, the accused has the opportunity to have a fair and impartial jury determine if he or she is guilty of the crime(s) charged in the indictment.

Criminal Proceedings Involving Certain Public Officials

Although generally the accused has no right to appear before the grand jury, Georgia law requires that special procedures be followed when the grand jury is considering indicting some current and former public officials or peace officers. These procedures do not apply to all crimes committed that might be committed by an official or officer but only those specifically designated by statute. The courts have held that these procedures are based on the belief of the legislature that "... the smooth, uninterrupted functioning of government, so important to the public welfare, may be endangered by requiring high public officials to endure a time consuming trial ... (on) an unfounded indictment."

Public Officials

By statute, when the grand jury is going to consider indicting certain designated pubic officials for the offenses listed below, the public official has the right to be present during the presentation of the evidence to the grand jury. These public officials are: (1) a state official whose position is created by the Constitution or by a statute; (2) an elected county officer, i.e., judge of the probate court, clerk of the superior court, tax receiver, tax collector, tax commissioner (where such office has replaced the tax receiver and tax collector) or a county commissioner; or (3) a mayor or member of a municipal governing authorities.

Not every offense that these public officials might commit entitles them to be present during the presentation of the evidence. The offense charged in the proposed bill of indictment must be one of the following:

- Malpractice, misfeasance, or malfeasance in office;
- Using oppression or tyrannical partiality in the administration or color of office;
- Willfully refusing or failing to preside in or hold court;
- Deliberately delaying or avoiding the due course or proceedings of law; or
- Willfully and knowingly demanding more costs than allowed by law.

Current and Former Peace Officers

A peace officer or former peace officer is entitled to the same protections afforded the public officers described above if the grand jury is going to consider an indictment charging the officer present with a crime alleged to have occurred while the officer was in the performance of his or her duties. If the crime alleged to have been committed was outside the scope of the officer's duties, these rules do not apply.

Procedures in Cases Involving Public Officials and Peace Officers Entitled to Be Present in Grand Jury

In the cases described above, the accused official or officer has a right to receive a copy of the proposed indictment at least 15 days before it is presented to the grand jury. The accused has the right to be present, with his or her attorney, in the grand jury room during the presentation of all evidence against him but is not permitted to cross-examine the witnesses. The official or officer also may make a sworn statement to the grand jury but cannot be subjected to direct or cross-examination.

The Supreme Court of Georgia has also held that a grand jury has no right, in the absence of specific statutory authority, to return a general presentment which charges a public officer with misconduct in office. If the grand jury finds such misconduct, they are limited to returning an indictment or special presentment charging the official with a crime.

Civil Functions & Duties

Since Colonial times, Georgia grand juries have been authorized, and in some cases required, to perform duties unrelated to criminal law. These functions, traditionally referred to as civil functions or duties, fall into four categories: inspections or investigations, elections and voting, appointments and nominations, and miscellaneous duties. Because in the past some grand juries have "exceed[ed] their authority and . . . become involved in politics and local feuds," the legislature and courts have strictly regulated the grand jury's duties and the procedures which the grand jury must follow in performing its civil functions. The rules which apply to each of the civil functions vary considerably and in most cases are too detailed to be easily summarized in this handbook. The district attorney or the court can advise you about these rules as needed.

Inspection or Investigations of Public Property, Records and Offices

Generally

In 1994, the General Assembly eliminated most of the mandatory inspections and reports which the grand jury was required to perform either annually or each term of court and replaced them with annual, periodic and optional inspections. The grand jury may conduct civil inspections or investigations only where specifically authorized by statute.

Annual Inspections

The grand jury is to inspect the condition and operation of the jail at least once each calendar year.

Periodic Inspections

At least once every three calendar years, the grand jury is to inspect and examine the offices and operations of the clerk of superior court, judge of probate court, the county treasurer or depository and the offices of the district attorney, if located in the county. If the district attorney does not maintain an office in the county, the grand jury may inspect the offices of the district attorney when they deem it necessary.

Optional Inspections or Investigations

Whenever deemed necessary by eight or more grand jurors, the grand jury shall appoint a committee of the grand jury to inspect or investigate the following:

- Any county office;
- Any county building;
- Any public authority of the county;
- Any court or court official of the county;
- The county board of education or county school superintendent; or
- Any of the records, accounts, property, or operations of any of the entities described above.

When the grand jury conducts a civil investigation or inspection under the 1994 legislation, the district attorney will advise you concerning the procedures which must be followed. During an authorized inspection or investigation, the grand jury or the designated committee is authorized to examine books, records and accounts, to have witnesses subpoenaed, and to hear evidence. Any oral testimony heard by the grand jury must be taken under oath, as unsworn statements are not evidence.

The grand jury is authorized to appoint one citizen of the county to provide technical expertise during the inspection or investigation. This technical expert receives the same compensation as grand jurors.

The following oath must be administered to witnesses who appear before the grand jury during a civil investigation or inspection:

Witness Oath

"You do solemnly swear (or affirm) that the evidence you shall give the grand jury in its civil investigation of (here identify the county officer, office or authority being investigated or inspected), shall be the truth, the whole truth and nothing but the truth. So help you God."

The grand jury is authorized to prepare and submit for publication reports or presentments based on its inspections or investigations. (See p. 34 and 35).

Other Inspections, etc. which the Grand Jury May Conduct

Several inspections which the grand jury can perform were not affected by the 1994 legislation.

County Tax Collector or Tax Commissioner

The county tax collector or tax commissioner is to submit the tax execution docket and cash book to the grand jury empaneled for the spring term of superior court.

County Treasurer

At least twice a year, the county treasurer is to submit a report to the grand jury showing the amounts of fines and forfeitures received by him and to whom such funds were disbursed for the six-month period preceding the report.

Reports of Receipts and Disbursements

At each term of superior court, the judge of the probate court, the county treasurer, the clerk of superior court and the sheriff are to submit a report of any money belonging to the county which was received by them and any expenditures. They are also required to provide the grand jury with a copy of the most recent financial statement or annual audit of their office.

Public Education

Members of the State Board of Education and any other person having authority to select or aid in the selection of textbooks for the schools are required to report any gifts or offers of compensation or remuneration made to them on behalf of any schoolbook publishing house, corporation, or individual publishing textbooks.

Child Abuse

The Child Abuse Protocol Committee is to provide a copy of its annual report to the grand jury which meets during the fall term of superior court.

County Jail Inmate Records

The grand jury is to examine inmate records at the county jail.

Conducting Inspections or Investigations

When the grand jury undertakes a civil investigation or inspection, the members must do so in a manner which protects the Constitutional rights of the person who is the subject of the inspection. The courts have held that, at a minimum, these include notice, the opportunity to present evidence and to respond to the report of the grand jury's findings. In the case of many public officials, the Georgia Court of Appeals has held that the public official must be afforded the right to appear with counsel before the grand jury, to hear the evidence presented and to give sworn testimony. If the grand jury conducts its investigation in a manner which is found to have violated due process, any report or general presentment is subject to being rejected by the court.

Duties Relating to Elections and Voting

Following the certification of the results of a primary, general, or special election, the records of the election are stored under the authority of the clerk of superior court. Twenty-four months following certification of the election, the records are to be presented to the grand jury for inspection prior to being destroyed.

Prior to 2003, the grand jury had specific responsibilities to perform regarding the preparation of certain types of voting machines. When the State of Georgia adopted direct recording electronic (DRE) equipment for use in all counties for general elections, the requirement that the grand jury oversee the preparation of voting machines became obsolete in all but a few municipalities that continue to use a voting machine that utilizes a mechanical counter to register the votes cast for candidates or ballot questions. If this type of equipment is still used in your jurisdiction, the judge will instruct you concerning these responsibilities and the district attorney can advise you concerning the legal requirements which must be followed.

Appointments or Nominations Made by the Grand Jury

Offices to which the Grand Jury May Make Appointments or Nominations

Foreperson of the Grand Jury

If the superior court judge who empanels the grand jury does not appoint the foreperson, he or she may direct the grand jury to elect a foreperson.

County Board of Equalization

Members and alternate members of the County Board of

Equalization are appointed by the grand jury for a three-year term. In the event of a vacancy, the grand jury may appoint a qualified citizen of the county to serve out the remainder of the term of office.

County Voter Registrars

The grand jury is responsible for submitting to the senior judge of the superior court, a list containing the names of 10 judicious, intelligent and upright citizens of the county for appointment by the judge as voter registrars.

Procedures for Appointments Other Than Foreperson

Prior to the grand jury electing, selecting or appointing anyone to any public office, other than foreperson, the clerk of superior court must publish a notice of the pending selection, election or appointment in the official newspaper of the county at least once a week for two weeks during a period not more than 60 days prior to the date of the election, selection or appointment.

Miscellaneous Duties

Setting Compensation of Jurors and Bailiffs

At the fall term, the grand jury fixes the compensation to be paid to grand jurors, petit jurors, coroner's inquest jurors and bailiffs. By law, the rate of compensation must be not less than $5 nor more than $50 per day for jurors and not less than $5 nor more than $70 per day for bailiffs. However, any increase in compensation over and above that which was paid bailiffs or jurors the previous year must be approved by the governing authority of the county. Any person who is summoned and appears for service as a grand juror is entitled to be paid regardless of whether or not he or she serves.

Recommend Change of County Line

If a petition to change the county line is received from the judge of the probate court, the grand jury may hold hearings on the petition. Two-thirds of the grand juries in each affected county must approve the petitions before the issue may be considered by the governing authorities of the county. The grand jury may also recommend that the Governor appoint a surveyor if the county line is disputed.

Historic Preservation

The grand jury may, by a majority vote, recommend that the county governing authority provide the probate court a suitable case or container in which historical materials may be preserved.

Local Duties

In addition to the duties and functions summarized in this section, the general assembly has enacted laws applicable to one or a few counties which provide those grand juries with additional duties. Because they do not apply in all counties, they are beyond the scope of this handbook. If there are local laws which provide that the grand jury in your county has duties other than those discussed above, the judge or the district attorney will advise you.

General Presentments & Reports

It is customary for the grand jury to make a report to the superior court either at the end of the term or when they have completed the majority of their work. This report, traditionally known as a general presentment, can contain general information about the work of the grand jury during the term, their findings resulting from the performance of their civil duties and making appropriate recommendations in areas within their jurisdiction. The general presentments may also contain suggestions to the succeeding grand jury.

With some very limited exceptions, the general presentments are merely the recommendations of the grand jurors and are not self-executing. The grand jury may recommend to the presiding judge that their general presentments be published and the manner in which they are to be published. The judge is required to review the general presentments and determine if they can be filed or published.

By statute, the grand jury is required to include certain matters in their general presentments. These include:

- A report concerning the results of their inspection of the tax execution docket and cash book of the county tax collector or tax commissioner. (See p. 30)
- A report that the grand jury has inspected the reports of receipts and disbursements of the probate court, clerk of superior court and county treasurer and found them to be correct. (See p. 30)
- A report regarding the record of inmates at the county jail. (See p. 30)

In preparing general presentments, you must be aware that there are limits imposed by the appellate courts on their contents. While reports of a general nature concerning areas where the grand jury has a statutory duty to inspect or investigate are acceptable, courts have repeatedly held that the grand jury cannot include, in a report or general presentment, comments which charge or accuse identifiable person(s) of misconduct. This, the courts have said, can only be done by a true bill of indictment or special presentment charging such person(s) with a crime.

The reason for this, the Georgia Supreme Court has explained, is that "when an indictment is returned, the accused has the right of an open hearing in which to be tried and assert his innocence. Reports (or general presentments) . . . offer no such right to the one defamed . . . [T]he individual who is named in the report or identifiable from it has little if any opportunity to adequately respond to the report's accusations."

Where the grand jury has a clear statutory duty to report its findings, it may make a "fair report[ ] . . . even though such report[ ] of necessity incidently reflect[s] negligence or incompetence." In all other instances, the courts hold that the grand jury may make only "general recommendations" which do not contain "reflections of misconduct." If the general presentments go beyond these limits, the court may seal or reject all or a portion of them. Additionally, any person identified in the general presentment may have the court expunge the critical portions from the public records.

Thus grand jurors, including members of grand jury committees, must exercise both discretion and care in the drafting of their general presentments if they contain matters which may be interpreted by others as being critical of any identifiable person or institution. By so doing they will minimize the probability that all or a portion of the general presentments will be expunged or not accepted by the court.

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Juror Notes

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