

GRAND JURY HANDBOOK



From the Office of
Your District Attorney

Welcome to
The Grand Jury

Welcome to the Grand Jury. You have just assumed a most important responsibility in the administration of justice in your community. Service on the Grand Jury is one way in which you, as a responsible citizen, can directly participate in government. The Grand Jury is one of the most powerful institutions of government. It has the responsibility of safeguarding individuals from unfounded prosecution while simultaneously protecting the public against crime and criminals. If your Grand Jury is to meet those responsibilities, you must be knowledgeable about your duties, responsibilities and limitations. You must serve willingly and accept your duties as a serious commitment to the community.

This handbook was prepared by the staff of the Prosecuting Attorneys' Council of Georgia and provided to you by your District Attorney to help you fulfill your duties as a Grand Juror. It summarizes the history of the Grand Jury as well as the law and procedures that govern the Grand Jury. However, it is not a comprehensive explanation of all of your duties and responsibilities and does not replace the instructions given to you by the Court nor the legal advice provided by the District Attorney. It will provide you with an overview of the duties, functions and limitations of the Grand Jury.

As you read this Handbook, it is important to remember that 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 which are available. Experience has taught that no single Grand Jury can do everything that the law allows them to do.

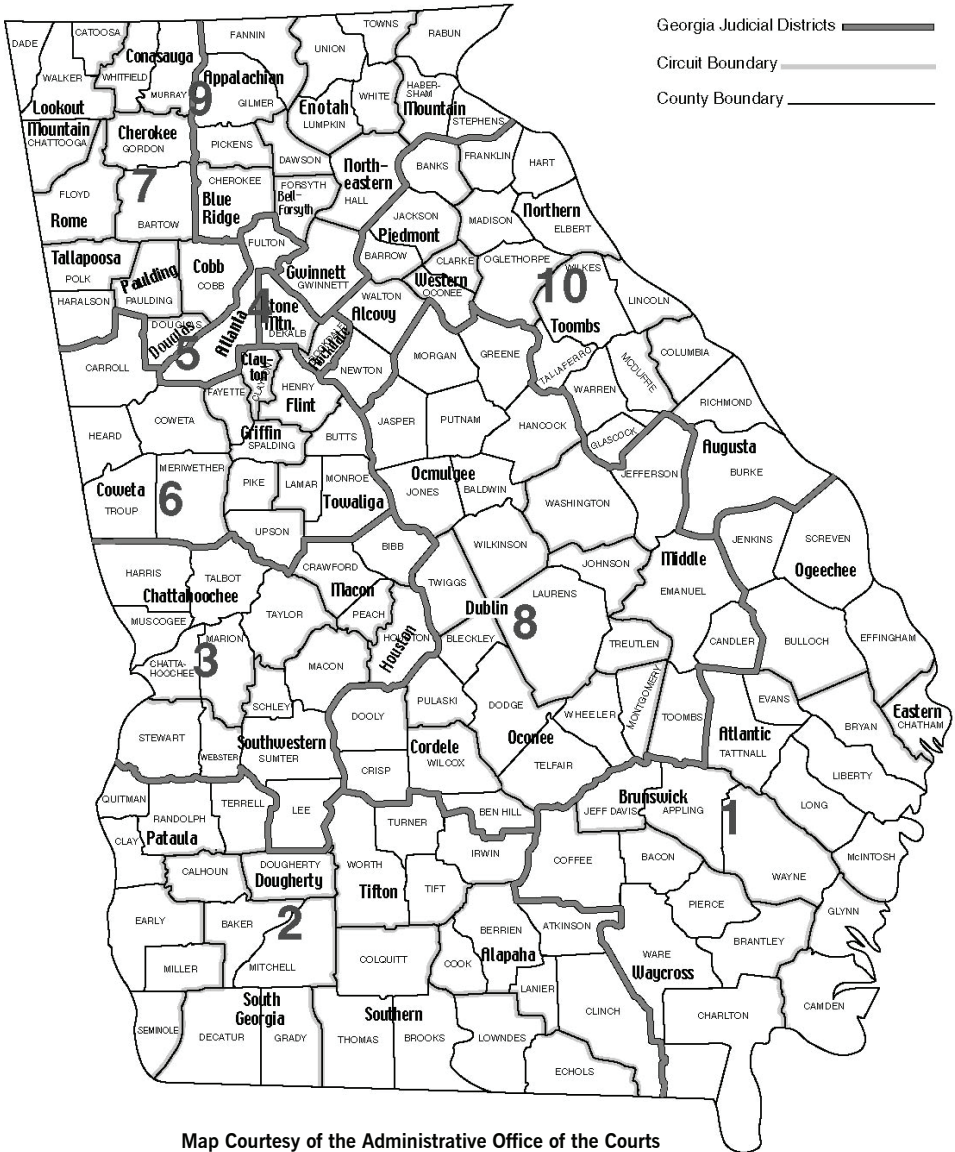
We sincerely hope you will find this opportunity to participate in the enforcement of the law a rich and rewarding experience. The Office of the District Attorney offers you its fullest cooperation and assistance as you undertake this important office. Please ask if you have any questions.



THANK YOU

Thank you for reviewing this handbook to better understand your duties as a grand juror. Serving on a grand jury is an extremely high honor. We greatly appreciate your participation and hope that you will enjoy this opportunity to assist in Georgia's system of justice. By performing these essential duties, you will provide your government and your community with an invaluable service.

Georgia Judicial Circuits & Districts





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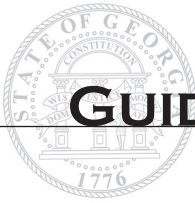
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GUIDELINES

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.
- Remember that all jurors have an equal voice in determining an indictment and each juror has the right to state the 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 may be right.
- Do not discuss cases with your fellow jurors *or anyone else* when you are outside the jury room.

- Be absolutely fair. Every matter that 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, witnesses, interpreter or court reporter has left the room before you begin your deliberations or vote on an indictment or special presentment.
- Keep in mind that 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 that have particular meanings under Georgia law. Some of the more common words and phrases are defined below.

Accusation

A formal charge made against a person, alleging that he or she has committed a crime. In Georgia, the term *accusation* describes a legal document used in lieu of an indictment or special presentment in misdemeanor cases and certain felony cases. In most other jurisdictions, this document is known as an *information*.

Capital Felony

A criminal offense for which the maximum penalty authorized by law is the death by lethal injection.

Felony

A crime which is punishable by death, imprisonment for life (with or without the possibility for parole), or for a term of imprisonment more than one year.

General Presentment

A written report by the Grand Jury which is submitted to the Superior Court, generally issued at the end of the term of court, in which the Grand Jury summarizes its activities and makes findings and recommendations which it is authorized by law to make in conjunction with its non-criminal duties.

Indictment

The formal document returned by the Grand Jury charging one or more persons with having committed a crime or crimes 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

A trial court created by the Georgia Constitution that has jurisdiction over children who are under the age of 17, who are alleged to have committed a crime. The juvenile court also hears cases in which a child, under the age of 18, has been abused

or neglected, is without a parent, guardian, or legal custodian, or has engaged in conduct, such as habitually skipping school, running away from home or using alcohol, which can only be committed by a child.

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 trial 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, county recorders courts and municipal courts are commonly referred to as magistrates.

Misdemeanor

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

No Bill

A finding made by the Grand Jury on a bill of indictment or special presentment after hearing the evidence, 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 indicating that the facts would justify a person of reasonable caution to believe that an offense has been or is being committed and that a named individual, or corporation, committed the offense. Probable cause does not involve a certainty, but requires merely a probability, something more than a mere suspicion or possibility.

Prosecutor

In Georgia, this is not the prosecuting attorney, but is a legal term used to describe a person who “instigates a prosecution by making an affidavit charging a named person with the commission of a penal offense, on which a warrant is issued or an indictment or accusation is based.”

Special Presentment

A special presentment is substantially the same as an indictment in that it is a document that charges the person named therein with having committed the crime or crimes described in the document. While at one time there were significant differences between an indictment and a special presentment, in modern practice, the only difference is that in a special presentment, no person is named as the “prosecutor” because, in theory, the offense charged is based on the Grand Jury’s own knowledge or observation of a crime having been committed instead of information derived from an arrest warrant.

Special Purpose Grand Jury

A Special Purpose Grand Jury is a grand jury impaneled at the request of the chief judge, the district attorney, or any other elected public official of a county or municipality within the county where the grand jury sits. A Special Purpose Grand Jury is not tied to a particular term of court and may compel evidence and subpoena witnesses as well as inspecting documents and records of any department, agency, board, bureau, commission, institution, or authority of the state or any of its political subdivisions which relate directly or indirectly to the subject of the investigation being conducted. Special Purpose Grand Juries do not return indictments but rather issue a report to the judge assigned to that special grand jury.

State Court

A court established by statute that has concurrent jurisdiction with the Superior Court over misdemeanors and certain types of civil cases in a particular county.

Statute of Limitations

A time limit fixed by statute, within which a criminal prosecution must be initiated by the filing of an indictment, special presentment or accusation. For a few offenses such as murder, some crimes offenses in which the victim is less than 16 years of age and certain offenses involving uses of DNA evidence to establish identity of the accused there is no statute of limitation. For most felony offenses, the statute of limitations is four years from the date when the crime occurred or is discovered, but the legislature has set longer statutes of limitation for crimes

for which the death penalty may be imposed and crimes such as forcible rape, racketeering and felonies committed against victims who are under 18 years of age. The statute of limitations for misdemeanor is two years. There are some circumstances that postpone the running of the statute of limitation, such as when: (1) the accused is not usually and publicly a resident within the State; or (2) the person committing the crime is unknown or the crime is unknown.

Superior Court

A court of general trial jurisdiction established by the Constitution of Georgia that has exclusive jurisdiction over felony cases and civil cases involving divorce, equity, and title to land, and has 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 sit at least once within a county and conduct jury trials. It also establishes the term of service during which the Grand Jury will sit. In Georgia, the terms of court are set by statute and vary from county to county, ranging 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.

Venire

A Latin term used to collectively describe those individuals who have been summoned and appear for jury duty but have not been selected to serve on a particular grand or trial jury.

Voir Dire

The term is from a formal form of French known as “Law French” that was used in England after 1066. It means “to speak the truth.” The term is used to describe the questioning, under oath or affirmation, of individuals who have been summoned for duty as a juror concerning their qualifications and, in the case of trial juries, their knowledge of the facts of the case and any biases they may have toward the parties.



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 104 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, "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 Carta, 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 12 knights or other freemen of every 104 men of every township, must submit Accusations of murder, robbery, larceny and harboring of criminals.

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.

1775 -1783

American Revolution

1200 - 1300

"Petit" or trial juries and grand juries become separate entities.

1735

The first Grand Jury in Georgia convenes in Savannah during the Trustee Period.

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, in which a large portion of Georgia’s western lands (now the states of Alabama and Mississippi) were sold to speculators who had bribed members of the Georgia legislature. Grand juries also were instrumental in the calling of the Constitutional Convention of 1877.

Beginning in the late 1800’s, 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.

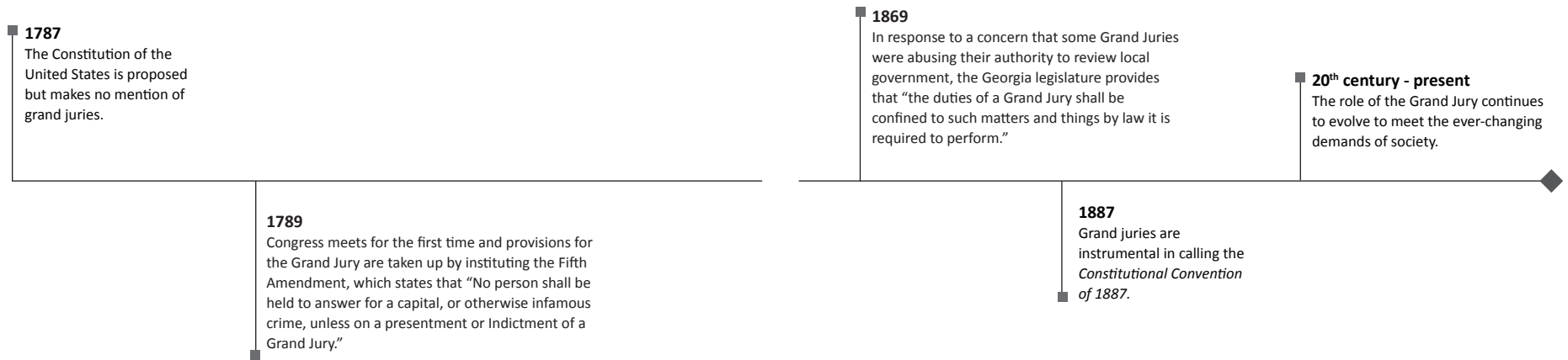
In Georgia, concern that some grand juries were abusing their authority to review

local government led the legislature in 1869 to provide that “the duties of a [G]rand [J]ury 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 impanel 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 applied to any county with a population of 70,000 or more according to the most recent census. Recent changes have expanded this further to all counties. 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. However, Special Purpose Grand Juries may not return an indictment of special presentment and 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, the Grand Jury is capable of providing a wealth of benefits to all citizens of your community.





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 explain who is qualified for service on the Grand Jury and then how grand jurors are selected.

Qualifications

Any citizen of Georgia may serve on a Grand Jury if he or she:

- Is a citizen of the United States;
- Is 18 years of age or older; and
- Is a current resident of the county and has resided in the county for at least six months prior to serving.

Except as indicated below, any citizen who meets these basic requirements is eligible to be summoned to serve as a grand juror. If you are 70 years of age or older, you may request, in writing, that the clerk of court be excused from jury service. Also if you are “engaged in work necessary to the public health, safety, or good order” or can show a valid reason you cannot serve on the Grand Jury, the Judge may excuse or defer your service to another term of court. These include:

- Active duty military personnel;
- Primary caregivers who provide active care and custody of a child six years of age or younger or someone who is physically handicapped;
- Full-time students at a college, university, vocational school, or other postsecondary school;
- Primary teachers in a home study program.

However, there are some situations that absolutely disqualify you from serving on the Grand Jury. These include:

- You are not a citizen of the United States;
- You currently hold, or within the previous two years have held, any elective office in State or local government;

- You were summoned, and reported, for duty as a grand juror or as a trial juror in any superior, state or probate court or for a coroner’s inquest, in the previous 12 months;

NOTE: *If you have served as juror within the last 12 months, it is important that you make the Judge or the District Attorney aware of this fact; in some cases, it may be legal for you to serve as a juror more than once a year.*

- You have moved out of the county (either before or after being selected as a grand juror).

An individual is also not eligible to serve on the Grand Jury if:

- You have been convicted of a felony in either a state or federal court but you have not had all of your civil rights restored.

NOTE: *Georgia and many other states automatically restore the right to vote to individuals who have been convicted of a felony when they complete all the terms of their sentence. However, this does not restore all civil rights or make the individual eligible to serve on a Grand Jury. If you were convicted of a felony in a Georgia court, before you can serve on a Grand Jury you must apply to the Board of Pardons and Paroles for either restoration of civil rights or a pardon and the Board must grant your request.*

- You have been determined to be mentally incompetent by a court of law.
- You currently are the defendant in a criminal case in which you are charged with a felony and you are participating in a pretrial release program, a pretrial release and diversion program, or a pretrial intervention and diversion program but have not completed the program.
- You have plead guilty to or have been convicted of having committed a felony drug offense but were sentenced pursuant to code section 16-13-2 but have not completed the terms of the sentence.
- You are currently serving a sentence (including probation) as a first offender for having committed a felony but have not completed the terms of the sentence.

- You are currently participating in a drug court division, mental health court division, veterans court division, a similar court program from another state, or a similar federal court program after having been charged with a felony offense.

If you are disqualified from serving on the Grand Jury, but do not disclose it before you take the oath as a grand juror, the consequences can be severe. First, prior to being actually placed on the Grand Jury, the presiding Judge and the District Attorney will question you, under oath, to make sure that you are legally qualified to serve as a grand juror. If you do not answer questions truthfully you can be charged with the crime of perjury and, if convicted, sentenced to prison for one to 10 years, fined up to \$1,000.00, or both. Second, any action taken by the Grand Jury while you are serving can be invalidated, resulting in all those cases having to be presented again to the Grand Jury. Third, you may be held in contempt of court and jailed or fined.

If you have any questions about your eligibility to serve, you should ask the District Attorney, the Judge, clerk of court or the jury manager as soon as you receive the summons.

Selection

All jurors (both trial jurors and grand jurors) are selected from a statewide master jury list identifying a pool of all citizens eligible for jury service within the State of Georgia. The Council of Superior Court Clerks creates the statewide master jury list from drivers' license information provided by the Georgia Department of Driver Services and from voter registration information obtained from the Secretary of State's Election Division. From the statewide list, the Council creates county master jury lists for each county in Georgia. The Council is responsible for distributing a county master jury list, in electronic format, to each respective county's Board of Jury Commissioners or jury clerk once per calendar year. The Council is also charged with maintaining and updating all information relative to jurors on such lists.

In each county in Georgia, the clerk of court chooses a random list of names from the county master jury list, which will comprise the venire. This procedure ensures that potential jurors are chosen from the county master jury list in a manner that does not deliberately or systematically exclude identifiable and distinct groups from the venire. After choosing a sufficient number of people (typically 18 to 75 names) to serve as grand jurors, the court clerk is responsible for notifying the prospective grand jurors when and where to report. This can

be done by issuing a notice or summons by mail at least 20 days before the beginning of each term of court at which a regular Grand Jury is impaneled. The court clerk is authorized to mail all summonses by first-class mail addressed to the prospective jurors' most notorious places of abode at least 25 days before the court date which they are required to attend.

In some counties, prospective grand jurors may be sent a written questionnaire concerning their qualifications to be a juror. This questionnaire must be completed and returned to the clerk or the jury commission. Any questions you answer in your questionnaires and any personal information you disclose cannot be disclosed to the general public. It is the duty of the Judge to reasonably protect your privacy during the voir dire process. Failure to appear for Grand Jury service, when duly summoned, may be punished as contempt of court.

While the summons usually will designate whether you are being called to serve on the Grand Jury or on a trial jury, it is possible for you to be switched from trial jury duty to the Grand Jury if there are not enough qualified prospective grand jurors.

Organizing and Impaneling 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 summoned for service on the Grand Jury assemble at the county courthouse (or other location indicated in the summons). After reporting to the courtroom, the prospective grand jurors will be administered the following oath by the presiding Judge or the District Attorney:

“You shall give true answers to all questions as may be asked by the court or the District Attorney concerning your qualifications to serve as a grand juror.”

The presiding Judge and the District Attorney will then ask the assembled jurors questions designed to ensure that everyone is qualified to serve as a grand juror. This process is known as “voir dire.” **It is critical that you answer these questions fully and truthfully and let the Judge and the District Attorney know if there is any reason to believe you may not be qualified. If you have any doubts or questions about your being**

legally qualified, you should bring those doubts or questions to the attention of the Judge or the District Attorney. If someone who is not legally qualified to serve on the Grand Jury is impaneled and serves, any indictments or presentments which are *true billed* by the Grand Jury during the term can be challenged and will have to be represented to another Grand Jury.

The reasons which would disqualify someone from serving on the Grand Jury are on pages 14-16 of this handbook. Moving out of the county is the most common reason why individuals cannot serve on the Grand Jury. If, at any time after you are selected, you move out of the county or there is a change in your personal situation that may affect your qualifications to serve, you must tell the District Attorney or the *foreperson*.

On page 23 of this handbook, we will discuss those instances in which a grand juror may be disqualified in a particular case or cases. (Note: A grand juror who is disqualified in a one particular case can still hear other cases.)

During voir dire, the Judge, a person designated by the Judge or the District Attorney usually will ask those who have been summoned for service on the Grand Jury if there is anyone who may be 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
- The “primary caregiver . . . of a child six years of age or younger”
- The “primary teacher in a home study program”
- The “primary unpaid caregiver” for a person over the age of six with serious physical or cognitive limitations
- A member, or the spouse of a member, of the armed forces (including the National Guard and Reserves) who is deployed “at least 50 miles from his or her home”
- Permanently mentally or physically disabled to the extent that they cannot perform the essential functions of a juror, even with reasonable accommodations

In these situations, 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 excusing those individuals who are disqualified or are being excused from serving, the presiding Judge will select 16 to 23 individuals who were summoned to serve as members of the Grand Jury and up to three alternate grand jurors. The 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.

After the court 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.

Normally, only one Grand Jury will be impaneled each term of court. However, the law allows the court to impanel additional grand juries if the public interest requires it.

Length of Service as Grand Jurors

If you are selected to serve as a grand juror or as alternates, you will normally serve for the full term of court unless you are discharged from further service by the presiding Judge. Because the length of a term of court varies from county to county, the Judge, or the District Attorney, will usually advise you 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

The *foreperson* serves as the presiding officer of the Grand Jury and performs other ministerial functions (described on page 21). Georgia law provides that the presiding Judge will either appoint the *foreperson* or direct that the Grand Jurors elect one of their members as *foreperson*.

The *foreperson* and other grand jurors will then be administered the oath of office:

Grand Juror and Foreperson Oath

“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 unrepresented 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, reward [or] hope [of reward].” By taking this oath, you become, for the 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 26 and 32 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 organize their own internal structure for the term and to identify the other individuals who will interact with them throughout the term.

Foreperson

The *foreperson* is the presiding officer of the Grand Jury and signs all indictments and presentments. The Superior Court Judge may appoint the *foreperson*, or 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 may 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 10, the *bailiff* is authorized to deliver documents from the court to the Grand Jury and to make the return of indictments and special present-

ments 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.

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 and evidence. 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 indictments, general or special presentments or subpoenas which the Grand Jury requests to be drawn will be prepared by the District Attorney's office.

Other Persons Authorized to Assist the Grand Jury

Interpreters:

If a witness who will testify before the Grand Jury either does not speak or understand English or is hearing impaired, the court will appoint an *interpreter* to interpret the proceedings and the witness' testimony.

Stenographer/Court Reporter:

During the presentation of certain matters, a court reporter will attend grand jury proceedings. Before the grand jury hears any testimony, the court reporter will take an oath swearing to keep all information they hear during the presentation a secret. It is the job of the court reporter to take and transcribe the testimony of any witness appearing before the grand jury and any argument or legal advice provided to the grand jury by the prosecuting attorney. The court reporter will prepare a transcript of the proceedings that will be furnished to the District Attorney.

Foreperson of Prior Grand Jury:

When requested by the Grand Jury, the foreperson of the previous Grand Jury may review and report on actions taken by that Grand Jury. In such a case, the former foreperson is entitled to the same compensation as members of the present Grand Jury.

Grand Jury Committees:

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 is discussed in greater detail on page 33.

Meetings and Quorum

As indicated on page 19, 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 pages 14-16, we mentioned that certain individuals cannot serve on the Grand Jury. There are also circumstances when a grand juror may be disqualified from serving on 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 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 third degree to a person under investigation by the Grand Jury or any party interested in the results of the case is also disqualified from hearing that particular case. The chart on page 25 shows those who are related within the third 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 indicated on page 36, the Grand Jury impaneled 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 why you are commanded not to disclose to anyone what occurs while the Grand Jury is in session: 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 process, but is of particular importance to an accused that may later be cleared by a return of a *no bill*.

To ensure secrecy, only the grand jurors, the District Attorney and his or her assistant district attorneys, a stenographer or interpreter when authorized, and the witness who is testifying may be present in the Grand Jury room while evidence is being presented. 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 that occurred during your term if you are ordered to do so by a Judge of a court of record in this State.

RELATION WITHIN THE 3RD 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

This chart shows who is related within the third 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 most felony cases 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. 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 that 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 will be little or no investigation of the charges 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 sufficient reason to believe the accused committed the crime, 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 that 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 have 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 that 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 to determine whether 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 that will 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 familiarize themselves with the parties involved in case one or more members become disqualified to serve (see page 23).

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 being served with a subpoena. All witnesses who appear 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 if 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 that 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 the return of an indictment can be based. 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 offered. 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 district attorney handling the case. (Example: the indictment alleges that John Smith was robbed, but the testimony is that Jane Smith was the victim.)

Deliberations

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 should be returned as a *true bill* or a *no bill*. No one other than the qualified members of the Grand Jury may be present during the deliberation and voting. The Grand Jury may also defer taking action on the case by tabling it, holding the case for further investigation, or by requesting 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. Generally, the person named as the defendant on a bill of indictment may not be compelled to appear and testify before the Grand Jury in that case.

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. The indictment (*true bill* or *no bill*) should 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 [C]ourt was being held open to the public with the [J]udge and [C]lerk 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 move to 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 make the return 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 Peace Officers

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 peace officers. These procedures do not apply to all crimes committed that might be committed by an 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.”

Current and Former Peace Officers

When considering an indictment charging a peace officer or a former officer with a crime that is alleged to have occurred while the was acting in the performance of his or her duties, a special procedure is used. 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 Peace Officers

The officer has a right to receive a copy of the proposed indictment 20 days before it is presented to the Grand Jury. The officer is entitled to be notified of when the Grand Jury will meet to consider the bill of indictment. If the officer notifies the District Attorney, they may testify before the Grand Jury after the District Attorney has finished his or her presentation of testimony. A warning and advisement of rights must be read before the officer testifies and

the officer will be subject to questioning, as any other witness who appears before the Grand Jury. The officer may confer with his or her attorney outside the presence of the Grand Jury but the attorney cannot ask questions or interrupt the proceedings.



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 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

The General Assembly has authorized the Grand Jury to conduct certain civil annual, periodic and optional inspections or investigations of designated public facilities and offices. Unlike their authority in criminal cases, the Grand Jury may conduct civil inspections or investigations only where specifically authorized by statute. In conducting a civil inspection or investigation, the Grand Jury proceedings must be conducted in way that comports with the requirement of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This means that, at a minimum, a person who is the subject of a civil inspection or investigation be given notice of the proceeding and an opportunity to be heard. In addition, the findings that the Grand Jury makes following a civil investigation must be based on admissible evidence.

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 the 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 that 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.”

The Grand Jury is authorized to prepare and submit for publication reports or presentments based on its inspections or investigations.

Other Inspections

Several inspections that 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 impaneled 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 or her, 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, as well as 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 that meets during the fall term of Superior Court.

County Jail Inmate Records

The Grand Jury is to examine inmate records at the county jail.

Peace Officers’ Use of Force (after July 1, 2016)

The Grand Jury may review matters where a peace officer’s use of force has caused death or serious bodily injury. The inquiry begins either at the request of the District Attorney or upon a vote of at least 8 members of the Grand Jury, after the District Attorney has received the investigative report of the incident. The result of this review will be presented in a presentment that may result in the District Attorney seeking a bill of indictment against the officer.

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 courts have 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 that is found to have violated due process, any report or general presentment is subject to being rejected by the court or having portions of the report expunged by the court.

Duties Relating to Elections and Voting

During an election year, depending on the type of voting machines that are used, the Grand Jury may have specific responsibilities before and after a primary or general election. If this is the case in your county, the Judge will instruct you concerning these responsibilities and the District Attorney will 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 impanels 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 the foreperson and other officers, 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, petit and 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, prior to 1982, the General Assembly could have enacted local laws that would provide the Grand Jury with additional duties. Because those duties 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 to determine if they can be filed or published. The general presentments must be returned to the presiding Judge “in open court, with the Judge presiding and the clerk present” the same as is required for indictments or special presentments.

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 page 34).
- 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 page 34).
- A report regarding the record of inmates at the county jail. (See page 34).

When preparing general presentments, you must be aware that appellate courts have imposed limits on the contents allowed. 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 that charge or accuse identifiable person(s) of misconduct. This, the courts have said, can only be done by a *true bill* of indictment or by a 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 thereby 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 reports of necessity incidentally reflect negligence or incompetence . . .” In all other instances, the courts hold that the Grand Jury may make only “general recommendations” that 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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