

31 FLORIDA GRAND JURY INSTRUCTIONS

**The Supreme Court Committee
On Standard Jury Instructions
In Criminal Cases**

1 PRELIMINARY STATEMENTS

- 1.1 **LADIES AND GENTLEMEN, the oath you have just taken now constitutes you the grand jury for _____ (county) (or the statewide grand jury) for this term of court. Your term begins today and will continue through the (date). You will not be expected to remain in continuous session, but you will be called from time to time when circumstances require your consideration. Your immediate duty will be to consider those matters to be presented to you at this time.**
- 1.2 **It is my duty to instruct you concerning your duties and it is your duty to follow these instructions as you understand them.**
- 1.3 **Your duties are those of an investigative body. You are authorized to inquire into and investigate both criminal and civil matters. You should be fully aware at all times of the enormous power vested in the grand jury. This power carries with it the profound responsibility to see that it is not abused. You are responsible only to the court.**
- 1.4 **No duty of citizenship is more important than service as a grand juror, for no other group of citizens has the opportunity to make a more valuable contribution to the administration of justice.**
- 1.5 **The grand jury system is of ancient vintage. History has proved its effectiveness in regulating the affairs of free people. The seven hundred years of its existence in its present form justifies it as a guardian of all that is comprehended in the police power of the state.**
- 1.6 **You always should keep in mind that the grand jury is both a sword and a shield... a sword because the power of the grand jury has a chilling and deterrent effect on those who violate the law... it is a shield because of its power and duty to protect the innocent against persecution.**
- 1.7 **Your service as a grand juror will be a satisfying and rewarding experience for by it you will participate directly in the administration of justice. You will have the opportunity, if circumstances justify it, to inquire into, examine, and investigate not only violations of the criminal law but all phases of the civil administration of government. You should bring to your task your most wholehearted and conscientious efforts. The grand jury is one of the keystones of democracy. Grand jurors upon being called into service are expected to exercise their honest convictions and best judgment in the administration of justice. The grand jury operates freely, unhampered, and subject only to the restraint fixed by the limitations and requirements of the law itself.**
- 1.8 **The importance of your work as a grand juror of this county (or the statewide grand jury) and your grave responsibility must be realized by each of you and be kept in mind during all of your investigations and deliberations.**

2 INSTRUCTIONS ON CRIMINAL MATTERS

- 2.1 **The function of the grand jury in criminal matters is to investigate and determine whether there is sufficient evidence to justify an indictment against an accused.**
- 2.2 **It is not your province to try the case and determine the guilt or innocence of the accused, and you are not expected to do this.**
- 2.3 **The guilt or innocence of a person indicted by the grand jury is determined by a trial jury that will be specially empaneled to try the case. The trial jury hears all the evidence, on both**

sides, in an adversary proceeding under the supervision of a trial judge. Upon the trial based upon the indictment the accused is entitled to be present and have the assistance of counsel and a verdict is rendered only after the accused has had an opportunity to see and hear the witnesses, examine the evidence, and have the case argued by counsel. The trial jury will be charged by the trial judge on the law applicable to the case. These safeguards are designed to protect and preserve the constitutional rights of an accused.

- 2.4 Your duty is only to ascertain whether there is "probable cause" a crime has been committed by the person so accused. If the evidence is sufficient to constitute "probable cause," then it is your duty to find what is known as a "true bill." If the grand jury does find a "true bill" and it is properly returned in open court, it then becomes the "indictment" on which the accused will be put to trial.
- 2.5 "Probable cause," which must be shown to your satisfaction before you will be justified in returning a "true bill," is defined as a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that a particular person is guilty of a particular crime.
- 2.6 You should vote to return a "true bill" if you find "probable cause" that a crime has been committed and that the accused probably did commit that crime. There may be instances when it seems probable that a crime has been committed and yet you feel that the accused is not guilty or you have a strong doubt in your mind as to guilt. In those cases you should vote not to return a "true bill," for in those cases you should keep in mind that you have heard only one side of the case and have no knowledge of the defendant's side of the case. Certainly, if there is considerable doubt in your minds of the accused, then it cannot be expected that the State could convince a trial jury of a defendant's guilt beyond every reasonable doubt, when the State's case will be vigorously attacked and the trial jury also will hear the defendant's story. A state attorney (or a statewide prosecutor) will advise and counsel the grand jury as its legal advisor and while you do not have to follow that advice you should give it strong consideration. The state attorney (or the statewide prosecutor) also will be in a position to advise whether other evidence may be available at the time of trial if the accused is indicted.
- 2.7 When so justified it is your solemn duty to cause the accused person to be indicted; likewise, when an indictment is not justified, it is equally your solemn duty to clear the accused person by returning a "no true bill."
- 2.8 Our state constitution provides that no person may be tried for a capital crime except on presentment and indictment by a grand jury. A capital crime is one that is punishable by death. Although you have the authority to do so, the court recommends that a grand jury not investigate criminal matters other than capital cases unless they are of such public importance that they justify the additional time and expense of investigation by the grand jury. Again, you should give weight to the recommendations and advice of the state attorney (or the statewide prosecutor) in the matters you are investigating; however, the final decision rests with you. You should keep in mind, however, that the state attorney (or the statewide prosecutor) in most cases has thoroughly investigated the case and will have the responsibility to prosecute the indictments resulting from your investigation. The state attorney (or the statewide prosecutor) has the duty to provide you not only the evidence unfavorable to the person under investigation but also any matters favorable to that person that are known; consequently, the state attorney's (or the statewide prosecutor's) recommendations usually are both practical and well-founded.
- 2.9 The grand jury should not cause any subpoena to be issued for a witness nor permit any witness to appear before it without first consulting the state attorney (or the statewide

prosecutor) or an assistant. This is in order to avoid inadvertently giving immunity to a person who may be subject to indictment.

- 2.10 The court recommends that the grand jury call witnesses and consider evidence only in those matters that are under consideration for presentment or indictment, and refrain from calling witnesses or gathering evidence to be used in cases in which an indictment or information has already been filed. You of course may continue with any incomplete investigations, or call witnesses and consider evidence as to any new charges against a person already indicted.

3 CIVIL INSTRUCTIONS

- 3.1 The grand jury is not limited to investigation of criminal matters. It has broad powers to make inquiries into civil administration, regardless of whether criminal or irregular conduct is charged. It has power to investigate public offices to determine if they are being conducted according to law and good morals. It also has power to investigate the conduct of public affairs by public officials and employees, including the power to inquire whether those officials are incompetent or lax in the performance of their duties.
- 3.2 The grand jury should investigate every offense affecting the morals, health, sanitation, and general welfare of the county. It should inquire into matters of governmental administration, including county institutions, buildings, offices, and officers, and, when appropriate, make presentment concerning the physical, sanitary, and general conditions.
- 3.3 You are cautioned, however, that a grand jury investigation shall not be made the tool of any group in order to harass or oppress any individual or institution or to pry into private affairs without good cause. Indictments based on street rumors or common gossip will not be permitted. No person should be singled out by the grand jury for the purpose of censure or to hold them up to scorn or criticism by imputation or innuendo. It is improper to make a presentment using words of censure or reprobation so that a public official or any other person is impugned or embarrassed, unless you return a "true bill."
- 3.4 This is not to say, however, that the grand jury may not make a fair report on its findings even though the report incidentally may reflect negligence or incompetence on the part of a public official. There are no limitations on the grand jury telling the truth when circumstances justify it. Grand jury investigations of civil matters and local government are not uncommon. They are necessary and commendable if they produce good results. The searching eye and inquiring mind of the grand jury is an effective deterrent to evil and corruption; no officer or agency of government is above or beyond the reach of the grand jury. A public official or employee who conducts public work in a proper manner has no reason to fear the grand jury, and if there are reasons to do so, you should not hesitate to call any public official or employee before you.

4 PROCEDURE

- 4.1 The officers of the grand jury are the foreperson and vice-foreperson, both to be appointed by the court (or elected by the statewide grand jury body), and the clerk, to be appointed by the foreperson.

DUTIES OF THE FOREPERSON: To preside over your sessions and see that they are carried on in an orderly fashion; appoint your clerk at your first session; be responsible for

seeing that no person participating in or advising the grand jury has any conflict of interest with the duties of a grand juror; consult with the state attorney (or the statewide prosecutor) concerning the scope, means, and method of the grand jury's investigation; report to the court any grand juror who the foreperson has reason to believe has violated the oath, duties, or responsibilities, or who is subject to disqualification; sign all interim and final reports approved by the grand jurors; return to the court a list of all witnesses who shall have been sworn by the grand jury; and sign presentments and indictments approved by the grand jurors.

DUTIES OF THE VICE-FOREPERSON: The vice-foreperson shall act in the absence of the foreperson and perform all the duties incumbent on the foreperson.

- 4.2 **DUTIES OF THE CLERK.** The clerk shall keep an attendance record of the grand jurors present and absent at each session; keep minutes of the proceedings at each session. The minutes shall reflect the subject matter of the proceeding and the names of the witnesses testifying in relation. The clerk shall record the aye and nay vote on each vote taken by the grand jury, but by number only and not by the names of the grand jurors. The clerk also shall sign all interim and final reports approved by the grand jury.

(Give only if applicable.) This grand jury has had a special fund budgeted for its use. The court will therefore appoint one of your number treasurer of this grand jury. The treasurer shall keep accounts of all receipts and disbursements of any funds received or disbursed by the grand jury.

- 4.3 The state attorney (or the statewide prosecutor) and assistants are your legal advisers on all matters that come before the grand jury. It is your duty to give weight and careful consideration to this advice. The state attorney (or the statewide prosecutor) or an assistant shall be present at all times when you are making investigations, and will interrogate the witnesses and administer the necessary oaths.

The state attorney (or the statewide prosecutor) will draft "true bills" for the grand jury and will provide the means for the drafting of its presentments.

- 4.4 Every grand jury shall consist of not less than 15 nor more than 21 persons. At least 15 of the jury must be present at all times when the jury is functioning. A favorable vote of not less than 12 of those present is necessary to the finding of any "true bill," presentment, or report. (The Statewide Grand Jury shall be composed of 18 members of which 15 members shall constitute a quorum.)
- 4.5 It is within your discretion to recess from day to day and week to week subject to the requirements of your duties. You are reminded, however, that the term of court is limited and the time within which you may act likewise is limited. You therefore should attend to your duties diligently and in as short a time as is compatible with the necessary attention to the work to be done.
- 4.6 The testimony and statements of those appearing before the grand jury will be recorded by stenographic or mechanical means. The court reporters are officers of the court and are bound to secrecy when serving the grand jury. The law requires that the notes, records, and any transcriptions prepared by the court reporter be impounded and sealed when your work is completed. The court reporter's notes may not be transcribed unless ordered by the court or the grand jury itself, and even after transcription they may not be inspected by any person other than the state attorney (or the statewide prosecutor) and the grand jury, except upon order of the court.

The decision to have a court reporter present during your sessions is to be made by the grand jury after due consideration to the nature of the work to be done, and it is recommended that the grand jury follow the advice of the state attorney (or the statewide prosecutor) on this question.

- 4.7 If necessary, the grand jury is authorized to obtain the services of a qualified interpreter of a foreign language. An interpreter will be provided you upon request.**
- 4.8 Bailiffs provided by the sheriff will be available to the grand jury as needed.**
- 4.9 It is the duty of the judges of this court not only to initially charge a grand jury concerning its duties but also to be available at all reasonable times to advise the grand jury in the event it becomes necessary. If at any time during your term you feel it necessary, you may call upon the court for any assistance it can render you.**
- 4.10 This grand jury has a duty to cooperate with any other grand jury investigations being conducted in this county or elsewhere in the state if the administration of justice requires it, including making reports of your investigation available to any subsequent grand jury of the county (or the statewide grand jury).**

5 DISQUALIFICATION OF A GRAND JUROR

- 5.1 A grand juror is disqualified from participating in an investigation of any person to whom the grand juror is related by blood or marriage or when a grand juror has a conflicting interest in any matter under investigation by the grand jury. Grand jurors found to be disqualified may excuse themselves or may be excused by the court, or a majority of the grand jurors may vote to prohibit a juror's participation in the investigation, deliberation, or voting.**

The court should be promptly advised of the disqualification of any juror.

6 DISQUALIFICATION OF STATE ATTORNEY (OR STATEWIDE PROSECUTOR)

- 6.1 If the state attorney (or the statewide prosecutor) is disqualified from advising and participating in the duties of the grand jury, the court will appoint a special state attorney (or a special statewide prosecutor).**

The state attorney (or the statewide prosecutor) will counsel, assist, and advise the grand jury; however, should any irreconcilable conflict arise between the state attorney (or the statewide prosecutor) and the grand jury, the court is available to assist in resolving the problems.

7 JURY FUNCTIONS ONLY AS A BODY

- 7.1 The grand jury functions and operates only as a whole body. No individual or group of grand jurors may make, or attempt to make, any independent investigation whatsoever.**
- 7.2 The law provides that, if a grand juror knows or has reason to believe that an indictable offense triable in this county has been committed, the juror shall declare that fact to the other jurors for investigation. Individually, a juror may receive information but that**

information shall be reported immediately to the foreperson or the state attorney (or the statewide prosecutor) for investigation if it is of interest to the grand jury or relevant to its investigations.

8 CHILD LABOR, ELECTION, SUBVERSIVE ACTIVITIES LAWS

8.1 CHILD LABOR LAW: The law requires that the court specifically charge the grand jury, and you are now charged, to investigate any alleged violation of the child labor laws of the state.

8.2 ELECTIONS: If requested by any candidate or qualified voter, the grand jury, if it convenes during a campaign period preceding an election day, shall investigate to determine if there are any violations of the election code. A "true bill" shall be returned if grounds exist for same.

8.3 SUBVERSIVE ACTIVITIES LAW: The subversive activities laws of this state make it unlawful for any subversive organization or foreign subversive organization to exist or function in the State of Florida. The court charges you that, if you have any information or belief concerning violation of the subversive activities laws, you will report the information to the court immediately. You are further charged that, if circumstances make it appropriate, you will inquire into the violation of the subversive activities laws and may inquire generally into the purposes, processes, and activities or other matter affecting communists or any related or other subversive organization.

9 OATH

9.1 The court would now like to emphasize the importance of the oath that each of you has just taken. The oath is prescribed by law and contains in simple terms the solemn obligation by which you are bound, and which you must observe in every respect. It contains no unnecessary words. It means exactly what it says.

9.2 The oath, in part, is that "You, as grand jurors for _____ County (or statewide prosecutor) do solemnly swear (or affirm) that you will diligently inquire into all matters put in your charge and you will make true presentments of your findings; unless ordered by a court, you will not disclose the nature or substance of the deliberations of the grand jury, the nature or substance of any testimony or other evidence, the vote of the grand jury, or the statements of the state attorney (or the statewide prosecutor)."

9.3 The importance of this part of the oath binding you to secrecy cannot be over-emphasized. I now charge you that you shall not under any circumstances discuss the matters to be kept secret unless you are released by court order. Your vote shall never be known; the opinion expressed by any of you on any matter before the grand jury shall never be made known; and the testimony given before you shall not be made known except by order of court. This secrecy is binding upon you for all time.

9.4 The oath concludes as follows:

"You shall not make a presentment against a person because of envy, hatred, or malice, and you shall not fail to make a presentment against a person because of love, fear, or reward. So help you God."

9.5 The oath, like the grand jury system itself, is of ancient vintage. It is in substance the same oath as was administered to grand juries under the common law. It is near perfect. It

contains the rules and high standards of fearless and impartial justice that will govern you in your service as the grand jury of this county (or statewide grand jury). Its solemn dictates are as appropriate today as they have been in the long past.

10 CONCLUSION

- 10.1 **The instructions you have just been given constitute the general charges that are given to the grand jury as to its duties, responsibilities, and procedures. You are admonished to give careful and serious consideration to all phases of all parts of the charge. You are to follow these charges, and having done so you should act according to the dictates of your own conscience and only in the best interest of the citizens of this county (or the state).**

11 APPOINTMENT

- 11.1 **The court appoints _____ as foreperson, and _____ as vice-foreperson, or in the case of the statewide grand jury, authorizes you as a group to select your foreperson and vice-foreperson. The foreperson will appoint the clerk and advise the clerk of the circuit court (or Supreme Court) of the clerk's name so that it may be entered in the minutes of the court. You may now retire to the grand jury room and commence your labor.**

Comment

The grand jury instructions were initially approved in 1981. They were revised in 1991 and amended in June 2002, and September 2005.