

KENTUCKY
GRAND JUROR
HANDBOOK



UNIFIED PROSECUTORIAL SYSTEM
OFFICE OF THE COMMONWEALTH'S ATTORNEY



**Commonwealth of Kentucky
Office of the Commonwealth's Attorney**

Dear Grand Juror:

The Commonwealth's Attorney welcomes you as a member of the Grand Jury. By being selected for Grand Jury service, you have assumed one of the most important responsibilities in the administration of justice in your community. A properly functioning Grand Jury is responsible for safeguarding individuals from unfounded prosecutions and for protecting the general public from crime and criminals.

This handbook has been prepared to assist in advising you of your duties and responsibilities. If you have any questions which are not answered within this publication or you want additional information, do not hesitate to ask the Commonwealth's Attorney or an Assistant Commonwealth's Attorney.

The Office of the Commonwealth's Attorney hopes that you find your Grand Jury experience as rewarding and enriching as have other Grand jurors who have previously served. You are encouraged to share the knowledge you obtain regarding the criminal justice system with your relatives, neighbors and friends.

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TERMS TO BE FAMILIAR WITH

PROBATION - The conditional release of a person who has been convicted of a crime and sentenced to a term of imprisonment. Conditions are attached to the release and if they are not followed by the defendant, he must then serve his term of imprisonment.

TRUE BILL - The endorsement made by the Grand Jury that at least nine of the twelve jurors believe the evidence presented supports an indictment against the accused.

INTRODUCTION – GRAND JURY SERVICE

The Grand Jury is a body of 12 citizens who sit to decide whether there is sufficient evidence in a criminal case to warrant further prosecution by the state. No one should stand trial before there has been a demonstration of sufficient evidence to support an indictment and no one should be required to bear the expense and worry of a defense against a frivolous charge.



In Kentucky, jury selection can be done either by jury commissioners appointed by the Court or by computer.

If the selection is done by jury commissioners, the commissioners take the names of citizens from county voter registration and licensed driver lists for jury service. Selected names are placed into a jury wheel which is delivered to the circuit clerk.

An alternative method of randomly selecting jurors can be elected by the chief circuit judge, who with the approval of the Chief Justice of the Supreme Court, can request the selection of names of prospective jurors from a computer which contains a list of the county's registered voters and licensed drivers. If a randomized list of names is provided by the computer, the jury commissioners are not appointed. All of the people chosen are summoned to appear in Court and names are drawn by the Circuit Court Clerk at random until twelve qualified and available persons are selected and sworn to serve as Grand Jurors.

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A prospective juror is disqualified to serve on jury duty for the following reasons:

- 1) If he is not a citizen of the United States; or
- 2) If he is not a resident of this County; or
- 3) If he is unable to speak and understand the English language; or
- 4) If he is incapable, by reason of physical or mental disability, of rendering effective jury service; or
- 5) If he has been previously convicted of a felony and has not been pardoned by an authorized person of the jurisdiction in which he was convicted; or
- 6) If he is presently under indictment; or
- 7) If he has served on a jury within the past twelve (12) months.

The authority of any particular Grand Jury exists only during the time in which that Grand Jury is in session. The Grand Jury may, however, recommend to the next Grand Jury that it pursue any business that is not completed.

Service on a Grand Jury has long been considered one of the highest duties of citizenship and a unique opportunity for the individual citizen to participate in the administration of justice. Historically, the function of the Grand Jury has been to protect the innocent from hasty, malicious and oppressive prosecutions. It has always stood as a check to insure that a charge is founded on sufficient and competent evidence.

WHAT IS A CRIME?

There are basically two kinds of law - civil and criminal. The Grand Jury is only concerned with criminal matters. In order to aid you in the performance of your duties, this section will help you understand the difference between the two.

TERMS TO BE FAMILIAR WITH

PAROLE—Early release of a convicted felon from the sentence imposed upon him to serve in the penitentiary or reformatory. In Kentucky, the Parole Board, whose members are appointed by the Governor, routinely release prisoners under the following guidelines (see diagram below).

PERJURY - The crime of willfully, knowingly, and falsely making a material statement in a judicial proceeding by one who has taken an oath to tell the truth.

PERSISTENT FELONY OFFENDER (PFO) - This is an individual who has previously been convicted of one or more felony offenses. Punishment provided is a penalty enhancement of the underlying charge of which the defendant must first be convicted before the PFO statute comes into play.

A PFO in the **First** Degree must be 21 years of age and have been convicted of at least two separate prior felonies.

A PFO in the **Second** Degree must also be 21 years of age but only has one prior felony conviction.

PETIT JURY - The jurors who are chosen to determine the guilt or innocence of a person charged with a crime and brought to trial. The burden of proof required of these jurors is to find the defendant guilty “beyond a reasonable doubt.” The verdict rendered by them must be unanimous.

PLEA NEGOTIATION - Plea negotiation is an aspect of the criminal justice process which allows speedy disposition of cases without necessity of trial. Under a negotiated plea, a defendant will plead guilty to one or more of the charges or an amended charge and the prosecutor will recommend a penalty to the judge.

PROBABLE CAUSE - The state of facts found to exist whereby a reasonable, intelligent and prudent person would believe that the accused has committed the crime charged. This is a finding necessary in order for the Grand Jury to return an indictment against a person.

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- c) A Class B felony involving the death of the victim or serious physical injury to a victim;
- d) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
- e) Use of a minor in a sexual performance as described in KRS 531.310;
- f) Promoting a sexual performance by a minor as described in KRS 531.320;
- g) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);
- h) Promoting prostitution in the first degree as described in KRS 529.030(1)(b);
- i) Criminal abuse in the first degree as described in KRS 508.100;
- j) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010 (first degree assault), 508.020 (second degree assault), 508.032 (domestic violence assault), or 508.060 (first degree wanton endangerment);
- k) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by 502.040; or
- l) Robbery in the first degree

A violent offender who has been convicted of or pleaded guilty to a capital offense (murder or kidnapping where the victim died), a class A felony, or a class B felony, must serve the lesser of 85% of the sentence or 20 years before he may be considered for parole by the Parole Board, unless a sentence of life without parole for 25 years or life without parole was imposed.

Prior to July 12, 2006 a violent offender is defined as a person convicted of a capital offense (as defined in the paragraph above), a Class A felony or a Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree, or serious physical injury to a victim. A person sentenced as a violent offender (for crimes committed prior to July 12, 2006) shall not be eligible for parole until having served 50% of the term of years received. If his sentence is life, he shall not be eligible for parole until having served at least 12 years in the penitentiary.

INTRODUCTION – GRAND JURY SERVICE

Civil law deals with situations where there is a dispute between two or more people. The community itself does not suffer any wrong. For example, Mr. Smith accidentally runs his car into Mr. Jones' truck. If these two individuals cannot agree to settle the damages out of court, a civil suit is filed so that a court and jury can decide who is negligent in the accident and who is responsible for the damages resulting from the accident.

In contrast, if Mr. Smith intentionally shoots Mr. Jones, the act is criminal. Not only is Mr. Jones injured, but society as a whole is injured. Why? Because Mr. Smith's act of shooting someone poses a threat to all of us. We, as a law abiding society have decided that anyone who acts in this manner should be punished. When this case goes through the criminal justice system, Mr. Smith may be found guilty of a crime and imprisoned. A crime takes place when an injury or wrong occurs, not only to an individual but to society as a whole. Society, by enactment of criminal laws, imposes penalties for this type of conduct.

HOW DOES A CASE COME BEFORE THE GRAND JURY?

When a crime has been committed it will come to the Grand Jury in one of two ways. First, a private citizen may obtain a warrant accusing another individual of a criminal act or the police may arrest an individual for committing a criminal act. The person accused will then be brought before the District Court and a date will be set for a preliminary hearing. At the preliminary hearing, the judge will determine whether the crime charged is a felony and whether there is sufficient evidence (probable cause) to believe that the accused person committed the crime. If the crime committed is a misdemeanor charge, then it will be adjudicated in the District Court. If the District Judge determines the crime to be a felony charge, he must hold it to the next Grand Jury for consideration. A defense attorney may waive the preliminary hearing and waive the case to

INTRODUCTION – GRAND JURY SERVICE

the Grand Jury. By statute, the District Court cannot convict people of felony charges. Felony charges must first be presented to the Grand Jury, which, as a body, determines whether there is sufficient competent evidence to return an indictment charging the accused. If so, the accused stands trial on the charges in the Circuit Court. The vast majority of cases arrive before the Grand Jury in this manner.

The second way a case comes to the Grand Jury is by direct presentation of a charge or charges. The Grand Jury may hear evidence on cases that have never come through the District Court. These presentations of evidence are called “direct submissions.” They are presented directly to the Grand Jury because of the nature of the charges; for example, the urgency of the situation or the necessity of secrecy in the matter for the protection of the victims or witnesses in the matter.

TERMS TO BE FAMILIAR WITH

INDICTMENT -The written formal charge of a crime by the Grand Jury alleging that a particular person has committed some act which has been designated by society as a crime.

K.R.S. -The Kentucky Revised Statutes. (The codified laws of this state)

MISDEMEANOR -Any crime which is punishable by confinement in the county jail or by the imposition of a fine not to exceed \$500. Misdemeanors are divided into three classifications:

| CLASS | PUNISHMENT |
|--------------|---|
| CLASS A | UP TO 12 MONTHS IN COUNTY JAIL AND/OR UP TO \$500 FINE* |
| CLASS B | UP TO 90 DAYS IN COUNTY JAIL AND/OR UP TO \$250 FINE |
| VIOLATION | UP TO \$250 FINE |

*Certain misdemeanors may have a maximum fine exceeding \$500.

The Grand Jury rarely hears misdemeanor charges unless the misdemeanor is joined with a felony offense. If a misdemeanor indictment is returned, it is referred back to the District Court which has exclusive jurisdiction of misdemeanors.

DISMISSAL -The decision by a Grand Jury not to indict a person. This decision must be reported to the Court in writing.

VIOLENT OFFENDER - If the crime was committed after July 12, 2006, a violent offender is a person who was convicted of or who pleaded guilty to:

- a) A capital offense;
- b) A Class A Felony;

TERMS TO BE FAMILIAR WITH

BOND -The document, normally backed by money or property, which guarantees that the person charged with a crime will appear before the Court. The Grand Jury may recommend that a bond be raised or lowered.

CIVIL LAW -The division of law relating to private rights and remedies which involve private individuals.

CRIMINAL LAW -The division of law which attempts to prevent harm to society by declaring what conduct is prohibited and by attaching a punishment or penalty for its violation.

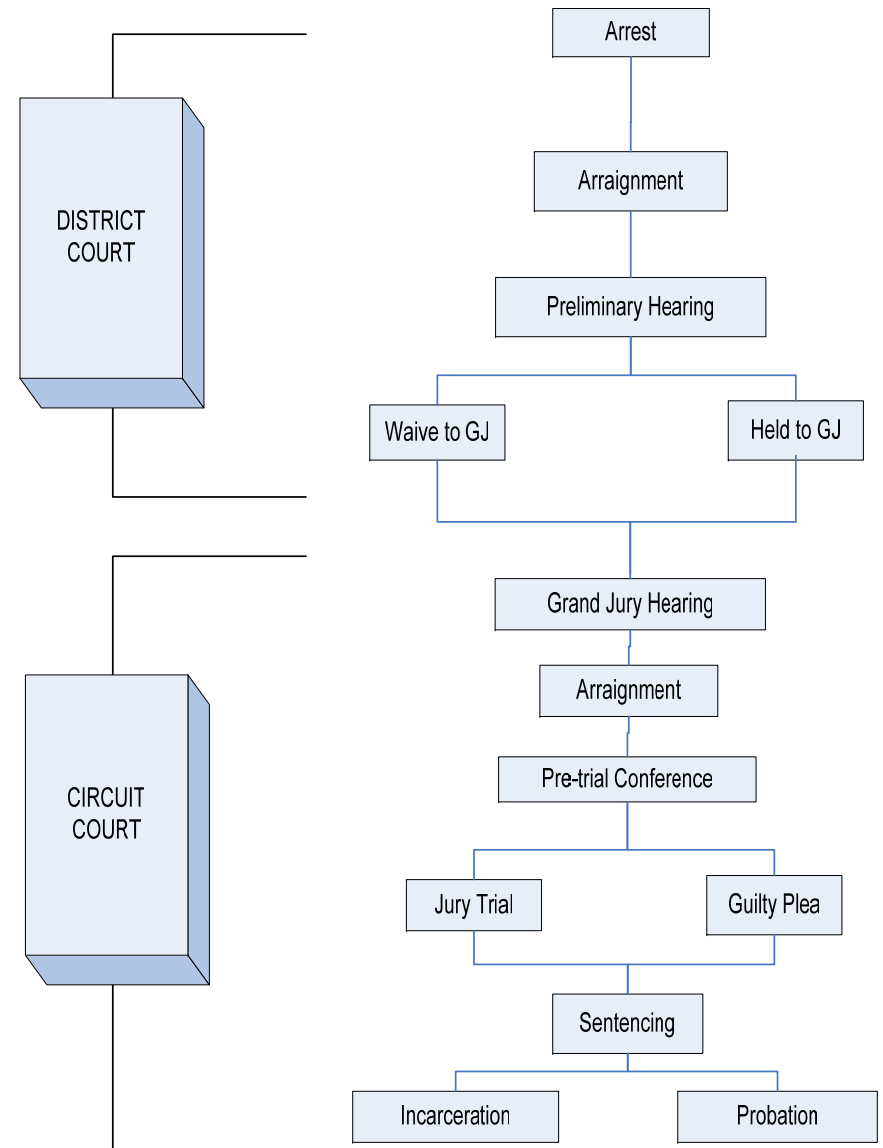
DIRECT SUBMISSION -A criminal charge against an individual that comes directly to the Grand Jury for consideration without first being heard in District Court.

FELONY -Any crime which is punishable by confinement in the penitentiary or reformatory for one year or more. Felonies are divided into four classifications:

| CLASS | PUNISHMENT |
|--------------|--|
| CAPITAL | DEATH, LIFE WITHOUT PAROLE FOR A MINIMUM OF 25 YEARS, LIFE, OR TERM OF NOT LESS THAN 20 YEARS NOR MORE THAN 50 YEARS |
| CLASS A | 20 YEARS TO 50 YEARS OR LIFE |
| CLASS B | 10 TO 20 YEARS |
| CLASS C | 5 TO 10 YEARS |
| CLASS D | 1 TO 5 YEARS |

Fines may also be imposed upon conviction for any felony. The Circuit Court has exclusive jurisdiction of felonies.

DIAGRAM OF THE CRIMINAL COURT PROCESS



THE GRAND JURY IN ACTION

RETURN OF INDICTMENTS OR DISMISSAL OF CHARGES

The most important duty of a Grand Jury is to evaluate evidence and determine whether there is sufficient competent evidence (probable cause) to believe that a crime has been committed by a specific individual. If the



Grand Jury so determines, an indictment will be returned. On the other hand, if the Grand Jury determines that no crime has been committed or that there is not sufficient evidence to believe that the accused committed the crime, the Grand Jury will dismiss the charge. In this respect, the Grand Jury safeguards the rights of the victim, the accused and society.

In order for an accused to be convicted of a crime, he must be found guilty by a Petit Jury (trial jury) using the standard of “proof beyond a reasonable doubt: after hearing all the evidence in the Circuit Court. The Grand Jury **should not** apply this standard. Your burden of proof is whether there is “probable cause” that there is sufficient evidence in the case to require the defendant to stand trial. You do not decide if the defendant is guilty—that is the duty of the trial or Petit Jury.

AFTER THE GRAND JURY

After you have finished your term of jury duty, we hope you will consider it as a service to the community and yourself. Hopefully, it will increase your awareness and interest in government and civic affairs. You should have a greater understanding of the nature of our crimes and the possible ramifications of the commission of those crimes. Also, you may be able to understand why the maximum penalties are not levied in each and every case and why it is necessary for the prosecution and the Court to use discretion in arriving at the proper outcome in each case. Your tenure as a Grand Juror should impress upon you the obligations each individual has to contribute to fair and impartial law enforcement in your community. If you and other Grand Jurors have done your job well, both our community and government will be improved.

We again urge you to share your experiences in the criminal justice system with your family, friends and neighbors. Only by educating the entire community to the problems which confront the enforcement of our laws will we be able to best serve each and every individual in the community. You, as a knowledgeable representative, can be of great service in sharing such information.

SUGGESTIONS TO MAKE YOUR TENURE AS A GRAND JUROR SUCCESSFUL

10. If you have personal knowledge relating to a charge or a witness who testifies, tell your fellow jurors. Place them on the same footing of knowledge upon which you stand. If you feel that you would be personally biased in a particular case, you may abstain from voting but you are not required to do so.
11. Each juror has the right to direct questions to any witness. Try to keep your questions germane and to the point. Furthermore, try not to become involved in unrelated instances or personal experiences similar to what you may hear from testimony of witnesses.
12. If you have personal knowledge of a criminal violation occurring, you should report your information to the Commonwealth's Attorney and the Grand Jury for investigation.
13. If you are contacted by anyone, including, but not limited to, news media representatives, about any business you or the Grand Jury has conducted while in session, politely advise the individual you have been sworn by the Court and instructed not to disclose any information in regard to Grand Jury actions; then notify the Commonwealth's Attorney or the Court of this contact.
14. You will receive \$12.50 for each day of attendance as a Grand Juror. The Circuit Clerk, if necessary, will prepare for you an affidavit acknowledging your service and salary.
15. In most counties, the Grand Jury normally meets at 9:00 A.M. The session continues until business is completed for the day. If other sessions are necessary, you will know in advance so that appropriate arrangements can be made in your schedule.
16. If at any time you have any questions or need any explanations, do not hesitate to ask. It is the job of the Commonwealth's Attorney to assist you in any way possible in the performance of your duties as a member of the Grand Jury.

THE GRAND JURY IN ACTION

CRIMES COMMITTED BY A JUVENILE?

The Grand Jury may hear evidence of criminal conduct alleged to have been committed by a juvenile. A juvenile is defined by Kentucky law as a person who was under the age of eighteen years when the offense occurred. Normally, all juvenile matters are adjudicated in the juvenile session of Family Court or District Court; however, the judge of that court may transfer charges to the Grand Jury for consideration by determining the seriousness of the offense and the circumstances of the offense and the juvenile warrant trying the juvenile as an adult. The judge of that court may also transfer cases to Circuit Court if the juvenile was over the age of fourteen at the time of the commission of the offense and a felony offense involving the use of a firearm was committed. The Grand Jury may then return an indictment treating the juvenile as an adult, or may direct that the juvenile be transferred back to the Family Court or District Court, or may dismiss the charges if there is insufficient evidence.

WITNESSES AND EVIDENCE BEFORE THE GRAND JURY

Witnesses will appear before the Grand Jury one at a time. Each witness will be sworn by the foreperson of the Grand Jury to tell the truth. The Commonwealth's Attorney or assistant will then question the witness about knowledge of the case. Before the witness is excused, each Grand Juror will be given the opportunity to ask pertinent questions of the witness. When all the evidence has been presented, the Grand Jury then decides whether that evidence warrants an indictment. At least nine members of a Grand Jury must agree in order to return an indictment. If less than nine members agree to return an indictment, the case will be dismissed; this is called a "No True Bill". Mere suspicion of guilt is not a sufficient basis upon which to return an indictment; the Grand Jury must

THE GRAND JURY IN ACTION

determine that there is a reasonable probability a crime has been committed by the accused.

After hearing testimony from the victim, the police or other witnesses, the Grand Jury may decide that there are other witnesses or evidence it needs to assist in coming to a decision. By majority vote, the Grand Jury may request that subpoenas be issued for additional witnesses or evidence. The foreperson should make the Commonwealth's Attorney aware of any such requests by the Grand Jury.

The Fifth Amendment to the United States Constitution and Section 11 of the Kentucky Constitution guarantee people the right against self-incrimination. If a witness refuses to testify or answer questions, the foreperson, with the Commonwealth's Attorney, must appear before the Circuit Judge, address the Court with the questions that the witness refuses to answer, and the Court determines whether a response to the question might incriminate the witness. If the Court rules that the answer would not incriminate the witness or that the witness has voluntarily given up his privilege against self-incrimination and the witness still refuses to answer, then the Judge can order the witness to jail for contempt of court.

The Grand Jury has the right to exclude the attorney for the Commonwealth while questioning witnesses. However, any testimony received by the jury in this manner must still be recorded as required by the Rules of Criminal Procedure.

Always consider the evidence as objectively as possible. Do not be swayed by emotional appeals to your sympathy. If you return an indictment and the case goes to trial, all relevant circumstances which are admissible will be considered by the Court and Petit Jury. Remember though, the Grand Jury must answer two primary questions:

SUGGESTIONS TO MAKE YOUR TENURE AS A GRAND JUROR SUCCESSFUL

1. Attend all sessions of the Grand Jury; arrive at the hearing on time. Not only your fellow jurors but the public are depending on you; and all twelve jurors must be present in order to conduct business.
2. Pay close attention to the testimony given and the evidence presented; the reputation or freedom of someone depends on what you will hear and see.
3. Be courteous to the witness and to your fellow jurors; do not try to monopolize the hearings or the deliberations; do not disclose to the present witness what the testimony of a prior witness has been.
4. The foreperson should administer the oath to a witness in an impressive manner so that the witness will realize the Grand Jury session is a serious judicial hearing and that he or she must tell the truth; the foreperson should raise his right hand, direct the witness to raise his or her right hand and forcefully give the oath to tell the truth.
5. Listen to the evidence and the opinions of fellow jurors during deliberations but do not be a rubber stamp.
6. Be independent but not stubborn; keep an open mind until all has been said by each juror.
7. Be absolutely fair—you are acting as judge. Because of the secrecy of the hearing no one may inquire into what you have done.
8. All jurors have an equal voice in determining whether they believe the accused is probably guilty of the crime charged.
9. Be convinced of the probable guilt of the accused before voting for an indictment. If you think there is other evidence that may explain the charge against the individual, talk to your fellow jurors about it. If you can convince a majority of the jurors, have the foreperson notify the Commonwealth's Attorney to subpoena the necessary person or information.

HOW THE GRAND JURY FUNCTIONS

Grand Jury's deliberation are to be communicated only to the Commonwealth's Attorney.

Any indictment returned by the Grand Jury must be endorsed a true bill and signed by the foreperson. All dismissals must be stamped "Dismissed" and endorsed by the foreperson. This is true even though the foreperson may not agree with nine or more of the other jurors. An indictment should be marked "A True Bill", and signed by the foreperson. The names of all witnesses who testified before the Grand Jury must appear on the face of the indictment. The completed indictment or an order of dismissal is then presented to the Court and read by the Circuit Clerk. All twelve jurors must be present while the jury is in session, deliberating or voting, and when returning its findings in open Court.

INDEPENDENCE OF THE GRAND JURY

The Grand Jury is an independent accusatorial and investigative body. However, individual Grand Jurors are not authorized to conduct investigation; all actions taken by the Grand Jury must be as a group. You are assisted and advised by the Commonwealth's Attorney and his or her staff; however, you are not a part of the Office of the Commonwealth's Attorney. The Grand Jury's responsibility is to your fellow citizens and to the Court. The Grand Jury should never consider itself as a rubber stamp.

THE GRAND JURY IN ACTION

- 1) Is there a reasonable probability a crime has been committed in this jurisdiction? and;
- 2) Is there a reasonable probability the accused committed the crime?

HOW THE GRAND JURY FUNCTIONS

THE FOREPERSON

The first order of business for any new Grand Jury is to elect one of its number as the foreperson. The duties of the foreperson are to give an oath to each witness to tell the truth (a card with the oath on it will be provided), to sign all documents that will be issued by the Grand Jury, to present the results to the Commonwealth's Attorney of all jury deliberations and to act as a liaison between the Grand Jury and the Commonwealth's Attorney. The foreperson should also keep the Grand Jury operating in an orderly fashion.

ROLE OF THE COMMONWEALTH'S ATTORNEY

It is the duty of the Commonwealth's Attorney to attend all sessions of the Grand Jury. The Commonwealth's Attorney serves as the legal advisor to the Grand Jury. It is furthermore the Commonwealth's Attorney's duty to assist the jury in the examination of witnesses. At the Grand Jury's direction, the Commonwealth's Attorney prepares indictments, dismissals or other orders. It is the Commonwealth's Attorney's duty to issue subpoenas for the attendance of witnesses or the production of evidence before the Grand Jury. At the Grand Jury's request, the Commonwealth's Attorney will assist in the preparation of the final report if the jury decides to return one to the Court.



HOW THE GRAND JURY FUNCTIONS

SECRECY OF GRAND JURY PROCEEDINGS

The rules of Criminal Procedure require that all testimony and evidence presented before a Grand Jury must be kept secret unless otherwise ordered by the Court. This admonition applies to the Commonwealth's Attorney or any of his/her assistants who may be present and all Grand Jurors. No one may examine a Grand Juror on what a witness said, what any other Grand Juror said, or how any Grand Juror voted. No person except the attorney or attorneys for the Commonwealth, a stenographer or operator of a recording device (who shall be sworn by the Court not to disclose any testimony or the names of any witnesses), the witness under examination, and interpreter if necessary, a parent, guardian or custodian of a minor witness, and the Grand Jurors shall be present while the Grand Jury is in session. Only the twelve (12) Grand Jurors shall be present while the Grand Jury is deliberating or voting. Violation of the secrecy admonition or the presence of persons other than Grand Jurors while the Grand Jury is deliberating or voting is punishable by the offender being found in contempt of court.

GRAND JURY DELIBERATIONS AND VOTING

After the witnesses and evidence have been presented to the Grand Jury, it is then time for the Grand Jurors to discuss among themselves whether an indictment should be returned, whether the charge should be dismissed, or whether more testimony or evidence is necessary in order to reach a decision. The results of the

