

GUIDANCE FOR RESUMING IN-PERSON GRAND JURY PROCEEDINGS

The need to resume grand jury proceedings is great in the State of Georgia. Grand juries perform many roles beyond considering proposed bills of indictment. They inspect government buildings, appoint citizens to serve on boards of equalization, and serve as investigatory bodies compelling sworn witness testimony and documentary evidence in certain public matters. But the bulk of the work done by grand jurors during their terms of service is to receive evidence and decide whether to issue true bills of indictment.

A brief survey of the 49 District Attorneys of Georgia revealed that the numbers of cases pending formal charges number from 50 to 100 in smaller-sized counties, 250 to 400 in medium-sized counties, and upwards of 1,000 cases in the largest counties. Unless a case proceeds by accusation, until a case is indicted by a grand jury, a defendant has no right to discovery, and most motions cannot be scheduled for a hearing. Additionally, Georgia Regional Hospital is not completing criminal responsibility evaluations until a case has been formally charged.

There is a pressing need to allow grand juries to convene. While some are concerned that resuming grand juries will further add to the backlog of cases ready for trial, most criminal cases are resolved short of a jury trial. Reinstating the grand jury process allows the state to move forward on those cases; initiates the beginning of the reciprocal discovery process; allows the defense to begin filing and litigating dispositive motions such as demurrers, motions to suppress, and immunity motions; and allows cases to advance toward closure to the benefit of both defendants and victims. Continued tolling of deadlines related to jury trials during the judicial emergency can relieve some of the pressure on the courts to resolve backlogs, but delaying indictment of cases will not eliminate the need for those cases to be resolved.

Practical challenges for in-person grand jury proceedings are no different than for holding any in-person court proceeding during the pandemic. When reviewing the process for the meetings of the grand jury, Dr. Mark Swanncutt, the medical representative on the Judicial

COVID-19 Task Force, saw no insurmountable issue with the meeting of in-person grand juries so long as public health guidance is carefully followed, including the strict enforcement of social distancing and wearing a mask or other face covering. While there are more jurors present for a grand jury than a trial jury, there are less court personnel present in the room with the grand jury, greater ability to space out the grand jurors in the room, and no need to accommodate spectators. The grand jurors can meet in any large room where their security and secrecy can be protected, including rooms not in a courthouse if authorized and designated appropriately.

Current law presumes that grand jury proceedings are conducted in person, and in-person proceedings are the focus of this report. Guidance for remote grand jury proceedings is forthcoming.

Selection of New Grand Juries

A majority of judicial circuits no longer have a sitting grand jury due to the expiration of the previous grand jury's term. Of those that still have a sitting grand jury at the time of this guidance, the term of most, if not all, will expire prior to the expiration of the Sixth Extension of Declaration of Statewide Judicial Emergency Order issued on September 10, 2020.¹ Therefore, the nature of grand jury selection is of paramount importance. Even if virtual grand juries are utilized in the future, due to the need to assess technology needs and provide education on the platform that will be used for virtual meetings, it is recommended initially that the selection of grand juries take place in-person. The following are recommended as the best practices for that process:

1. Courts should prepare a special grand jury questionnaire that requests additional information not generally included on a standard questionnaire including, among other things, a cell phone number and email address for the potential juror, and whether the potential juror is a "vulnerable person" as defined by the Centers for Disease Control and

¹ There are a few circuits that ended the last term of court early and declared a special term of court, which allowed the recall of the grand jury from the last ordinary term of court to continue to meet concerning time-sensitive essential matters.

Prevention and the Georgia Department of Public Health. See Judicial COVID-19 Task Force Report: Guidelines, Best Practices, and Resources at <https://georgiacourts.gov/covid-19-preparedness/>. Where virtual participation is considered as a potential option, the questionnaire should also ask whether the potential juror has access to a desktop, laptop, tablet, or other smart device with internet access; whether the potential juror has access to reliable high speed internet; whether the juror has other individuals in their home or office during the times the grand jury will be meeting; and whether the grand juror has experience with the video conferencing platform that would be utilized for the grand jury proceedings.

2. When summoning a new grand jury, the Clerk of Superior Court should increase the number of people summoned for grand jury duty as more hardship requests are to be expected due to health, child care, and economic concerns. The summons should be mailed as soon as the Chief Judge of the Superior Court authorizes the resumption of grand jury proceedings in a county and preferably well in advance of the 25 days allowed by OCGA § 15-12-65.1.

3. Potential jurors should be provided a contact number for the court and instructed to call within 48 hours in advance of the appearance date to determine when and if the juror should appear and to confirm that the juror is not experiencing any symptoms of and has no known exposure to COVID-19.

4. Arrival times for the potential jurors should be staggered, with no more than 12 potential jurors in the grand jury room at a time. The selection should take place in a room large enough for potential jurors and court staff to maintain social distancing of at least six feet. All persons should wear a mask or other face covering over their noses and mouths throughout the process. Where existing grand jury rooms will not allow for such spacing, the court should consider other locations in the courthouse and other county buildings where distancing requirements can be met. If there is a need to move from the courthouse to another location, the Chief Judge of the Superior Court should issue a declaration of judicial emergency under OCGA § 38-3-61 providing that

the potential jurors' access to the courthouse is impractical and designating an appropriate alternative facility.

5. In order to ensure a quorum in the event that certain members become infected by COVID-19 or become otherwise unable to serve, courts should select 23 grand jurors and three alternates as provided by OCGA § 15-12-61.

6. Courts should consider utilizing concurrent grand juries pursuant to OCGA § 15-12-63. This will allow the grand juries to meet more frequently without further hardship to grand jurors who are working or acting as caregivers and allow a more expedient resolution of any backlogs caused by the judicial emergency. Furthermore, if a member of one of the grand juries should test positive for COVID-19 and that grand jury is required to stop meeting for a period of time, the concurrent grand jury would be able to continue meeting.

Best Practices for Conducting In-Person Grand Jury Proceedings

1. All members of the grand jury, the prosecuting attorney, and witnesses should maintain social distancing of at least six feet. Where existing grand jury rooms will not allow for such spacing, the court should consider other locations in the courthouse and other county buildings where the distancing requirements can be met while maintaining the secrecy required of grand jury proceedings. If there is a need to move from the courthouse to another location, the Chief Judge of the Superior Court should issue a declaration of judicial emergency under OCGA § 38-3-61 providing that the grand jury's access to the courthouse is impractical and designating an appropriate alternative facility.

2. Due to the intimate nature of grand jury presentations and deliberations, each grand juror, witness, and prosecuting attorney should wear a mask or other face covering at all times while the grand jury is meeting. Witnesses should wear face shields so the grand jurors can better evaluate demeanor.

3. Any food or beverages provided to grand jurors should be individually packaged, and courts should consider loosening restrictions on grand jurors bringing in their own snacks and drinks.

4. Have a supply of single-use notebooks and writing instruments on hand, or have jurors bring their own.

5. Witnesses should be scheduled to arrive at staggered times to discourage waiting together with others in a witness room where social distancing would be difficult to maintain. Witnesses should be required to leave upon the completion of their testimony and avoid congregating in hallways or other public areas.

6. District Attorneys or their designated staff should educate law enforcement and other witnesses prior to the grand jury meeting about staggered arrival times and the need to be on time for their presentations to the grand jury.

7. If a witness arrives late, the witness should provide a cell phone number to a designated member of the District Attorney's office and should wait outside the courthouse or other facility until called to testify.

8. When showing evidence, technology should be utilized, if possible, to avoid passing evidence between the grand jurors. When evidence must be passed between the grand jurors, gloves and hand sanitizer should be made available and utilized.

Other Responsibilities of Grand Juries

The grand jury has other statutory responsibilities in addition to considering indictments in criminal matters.

Grand juries are required to inspect the offices of the Clerk of Superior Court, District Attorney, Probate Court, and Tax Commissioner once every three years. OCGA § 15-12-71. If no inspection is required in 2020, grand juries are encouraged to allow their successors to conduct

those inspections in the next calendar year. If an inspection is required during this calendar year, the grand jury should, if possible, utilize technology to conduct the inspection. If the inspection must be conducted in-person, public health guidance should be followed, including face coverings and social distancing.

Grand juries are required to inspect the county jail every year. OCGA §§ 15-12-71, 15-12-78. If the grand jury did not inspect the county jail prior to the judicial emergency, technology should be utilized to complete the inspection, if possible. If the inspection must be conducted in-person, all guidelines of the CDC and Georgia Department of Public Health should be followed, including face coverings and social distancing.

Grand juries are permitted, when necessary, to inspect or investigate any county office or building. See OCGA § 15-12-71. If a grand jury determines that such an inspection or investigation is required, the grand jury should, if possible, utilize technology to conduct the inspection. If the inspection must be conducted in-person, public health guidance should be followed, including face coverings and social distancing.

Guidance Issued September 10, 2020

This guidance is based on recommendations made by the Interpreter/Court Reporting Subcommittee of the Judicial COVID-19 Task Force.