

HANDBOOK  
for  
VIRGINIA  
GRAND  
JURORS

46445



NCJRS

APR 19 1978

ACQUISITIONS

HANDBOOK  
for  
VIRGINIA  
GRAND  
JURORS

Published by

The Virginia State Crime Commission

September, 1976

This Handbook is published under the auspices of the Virginia State Crime Commission.

One of the findings of the Commission's 1974 study of the grand jury system in Virginia was that such a handbook was needed to inform grand jurors of their duties and responsibilities. This publication is submitted to fill that need.

**Virginia State Crime Commission  
Suite 905, 701 East Franklin Street  
Richmond, Virginia 23219**

**This publication was made possible through a grant from the Virginia Council on Criminal Justice 75A-3040.**

## TABLE OF CONTENTS

### PART I – NATURE OF THE GRAND JURY

1. Types . . . . .	1
2. Function of a Regular Grand Jury . . . . .	1
3. Function of a Special Grand Jury . . . . .	1
4. Importance of the Grand Jury . . . . .	2
5. Origin . . . . .	2
6. The Preliminary Criminal Process . . . . .	2
a. Initial Proceedings . . . . .	2
b. Bills of Indictment . . . . .	3
c. Misdemeanors . . . . .	3

### PART II – THE REGULAR GRAND JURY

7. Qualifications . . . . .	4
8. Selection, Summons, Size . . . . .	4
9. Exemptions and Excuses . . . . .	4
10. First Appearance in Court . . . . .	5
11. Oath . . . . .	5
12. Charge by the Court . . . . .	6
13. Procedure in the Jury Room . . . . .	6
a. Quorum . . . . .	6
b. Hearing Witnesses . . . . .	6
c. Witness Refusal to Testify . . . . .	7
d. Accused as a Witness . . . . .	7
14. Determination to Indict or Not . . . . .	8
15. Finding of Indictment . . . . .	8
16. Special Findings, If Any . . . . .	8
17. Return of Indictment . . . . .	9
18. The Commonwealth's Attorney . . . . .	9
19. Secrecy . . . . .	9
20. Protection of Grand Jurors . . . . .	10
21. Practical Suggestions . . . . .	10
22. Compensation . . . . .	11

### PART III – THE SPECIAL GRAND JURY

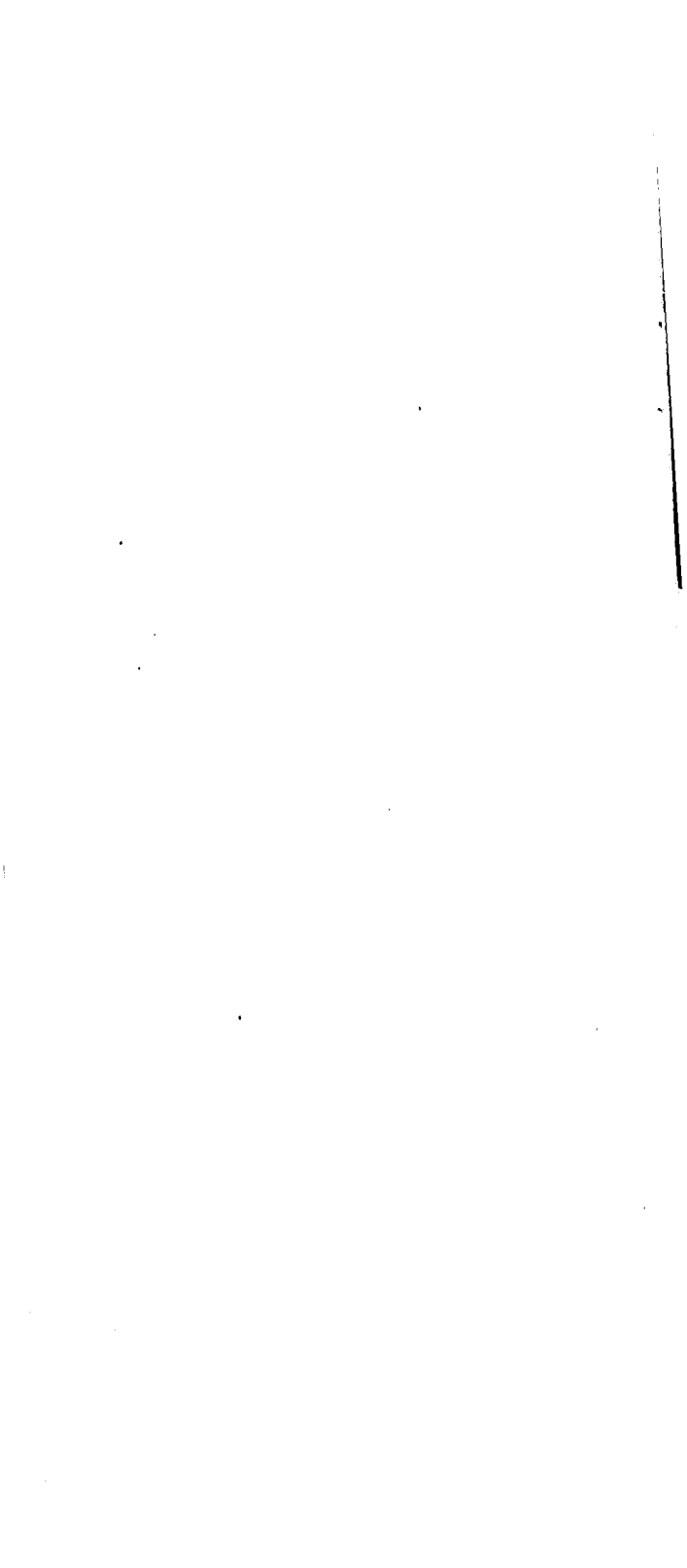
23. Function of a Special Grand Jury . . . . .	12
24. Characteristics . . . . .	12
25. Scope of Investigation . . . . .	12
26. Convening . . . . .	13
27. The Commonwealth's Attorney . . . . .	13
28. Special Counsel . . . . .	14

29. Special Investigative Personnel . . . . .	14
30. Court Reporter . . . . .	14
31. Subpoena Power . . . . .	14
32. Warnings Given to a Witness . . . . .	15
33. Counsel for the Witness . . . . .	15
34. Oath of Witness . . . . .	15
35. Examination of Witness . . . . .	16
36. Witness Refusal to Testify . . . . .	16
37. Deliberation . . . . .	16
38. Findings . . . . .	17
39. Report . . . . .	17
40. Transcript, Notes, etc. . . . .	18
41. Filing of Report . . . . .	18
42. Secrecy . . . . .	18
43. Compensation . . . . .	18

## FOREWORD

This handbook is intended for citizens who have been selected as members of the Grand Jury and are about to report to the Court to perform their duties. It does not purport to be a complete statement of the law affecting the Grand Jury and its work. The Court itself is the sole authority in its charge to the Grand Jury and in any later instructions, as to these governing principles of law. This handbook merely attempts to give a Grand Juror an understanding of the general nature of his functions, with some practical suggestions as to how best he can carry them out.

In order that each Grand Juror may perform his or her duties as intelligently and efficiently as possible, it is suggested that the contents of this handbook be studied carefully before the term of service begins. Also, this handbook should be kept available for ready reference during the period of service.





# I. NATURE OF THE GRAND JURY

## 1. Types

There are two types of Grand Juries — Regular and Special. A Regular Grand Jury is convened at each term of the Circuit Court of each city and county, to attend to the usual matters necessitating Grand Jury action. On infrequent occasions, a Court will convene a Special Grand Jury to investigate some particular matter.

## 2. Function of a Regular Grand Jury

A regular Grand Jury is a body composed of from five to seven citizens of a city or county, summoned by the Circuit Court of that city or county, to consider bills of indictment and to hear witnesses and determine whether there is sufficient probable cause to believe that a person accused of having committed a serious crime did commit such crime in such city or county, and should stand trial therefor at a later date.

The Grand Jury does not hear both sides of the case and does not determine the guilt or innocence of the accused person. This is determined by a "petit jury" if and when the accused is tried later. The Grand Jury only determines whether there exists sufficient probable cause that the accused stand trial.

## 3. Function of a Special Grand Jury

A Special Grand Jury is a body composed of from seven to eleven citizens of a city or county, summoned by a Circuit Court to investigate and make report upon any condition which tends to promote criminal activity in the community or which indicates misfeasance of governmental authority by government agencies or the officials thereof.

If a Regular Grand Jury or any member thereof is of opinion that any such matter needs investigation and so informs the Court, the Court shall impanel so many of the Regular Grand Jury as are of that opinion, plus any additional members as may be necessary, as a Special Grand Jury.

The function and duties of a Special Grand Jury are set forth in detail in Part III of this Handbook.

charged therefor in a written accusation called a Warrant or Summons.

Crimes of a serious nature are classified as "felonies", which are punishable by confinement in the penitentiary. Crimes of a less serious nature are classified as "misdemeanors", and are punishable by confinement in jail for a period not to exceed twelve months and/or by a fine not to exceed \$1,000.

A person held on a Warrant is brought to trial thereon in a District Court. The trial is conducted before a judge without a jury. (1) If the judge determines that the accused is not guilty of any criminal offense, he dismisses the case. (2) If the judge determines that the accused is guilty of a misdemeanor only, he will assess the punishment. (3) If, however, the judge determines that a felony may be involved, he will certify the case to the Circuit Court for presentation to a Regular Grand Jury to determine whether there is probable cause to believe that a felony has been committed by the accused person. This procedure is involved because a District Court has no authority to try a person for a felony.

The District judge will fix the terms on which the accused may be released on bail pending action on the case of the accused in the Circuit Court.

*(b) Bills of Indictment.* After a case has been certified to the Circuit Court, the Commonwealth's Attorney for the city or county, as the case may be, will prepare a written document called a "bill of indictment", in which the accused is charged in a legal and formal manner, with having committed a specified felony.

As will be described in greater detail later in this handbook, it is this "bill of indictment" that the Regular Grand Jury considers and determines whether sufficient probable cause exists to require that the person accused stand trial thereon at a later date in the Circuit Court.

*(c) Misdemeanors.* A Grand Jury usually does not deal with minor crimes (misdemeanors) nor with traffic offenses. Prosecution of these offenses usually is initiated by the police or the Commonwealth's Attorney on a Warrant or a Summons. Indeed, were this not so, a Grand Jury would be so submerged with the volume of such complaints that it could not perform its more important duties.

## II. THE REGULAR GRAND JURY

### 7. Qualifications

A Grand Juror shall have been a resident of Virginia for at least one year and a citizen of the city or county in which he or she is to serve for at least six months, and shall be "eighteen years of age or older, of honesty, intelligence and good demeanor and suitable in all respects to serve" as a Grand Juror.

### 8. Selection; Summons; Size

Each year the judge of the Circuit Court of each city and county selects at least sixty and not more than one hundred and twenty citizens from the city or county to serve as Grand Jurors therefor during the ensuing year.

Not more than twenty days before the commencement of the term of Court, the Clerk of the Circuit Court selects from the Grand Jury list, not less than five nor more than seven persons to serve as Grand Jurors for that term of Court.

The Clerk directs the sheriff to summon the persons thus selected to appear at the Court on the first day of the term to serve as Grand Jurors for that term.

### 9. Exemptions and Excuses

Any person who has legal custody of a child sixteen years of age or younger or of a person having a mental or physical impairment requiring continuous care during normal court hours, shall be excused from jury service upon request.

If you are exempt from jury service due to any of the foregoing reasons—or, if you have some other good reason upon which you wish to rely to be excused from Grand Jury service, you should contact the judge of the Circuit Court to which you have been summoned immediately and in person (or if the judge is not available, contact the Clerk of that Court). **DO NOT WAIT UNTIL THE DAY TO WHICH YOU HAVE BEEN SUMMONED**, because, if you are excused, this may cause serious inconvenience to the Court and a delay in the administration of justice while another Grand Juror is procured.

Your service as a Grand Juror ordinarily will require only part of one day. In view of the high

privilege of service as a Grand Juror and of the importance of the public service rendered thereby, you should be reluctant to be excused therefrom unless it is absolutely necessary.

### 10. First Appearance in Court

You will report for service at the courtroom of the Circuit Court to which you have been summoned on the date and at the hour specified in the summons.

The Clerk of the Circuit Court will call your name and you will take your place in the jury box (the name applied to the area in which jury chairs are located).

The Court will designate one of your number to be Foreman (your presiding officer). The Foreman will then be sworn in under an oath which in itself states your important powers and responsibilities. The remaining members of the Grand Jury are then sworn to observe the conditions of the same oath.

### 11. Oath

The oath taken by each Grand Juror is as follows:

You shall diligently inquire, and true presentment make, of all such matters as may be given you in charge, or come to your knowledge, touching the present service. You shall present no person through prejudice or ill will, nor leave any unrepresented through fear or favor, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth. So help you God.

To "diligently inquire" means to make an honest and earnest consideration of all the circumstances involved in the matter, and a common sense adjudication of the facts.

Your oath prescribes an obligation of impartiality—the foundation of justice and equality.

The obligation of "truthfulness" is a pledge of incorruptibility and fairness in the performance of your duties.

If you follow the conditions of your Oath of Office, you will have met your full obligation as a member of the Grand Jury, and you will have performed your responsibilities in accordance with the law.

## 12. Charge by the Court

After you have been sworn, the judge will address you formally, and in greater detail, as to how you are to perform your duties and responsibilities. This address is called "The Charge to the Grand Jury". This Charge, plus any other instructions given to you by the Court, in conjunction with your Oath, are your controlling guide.

Upon receiving from the Court its Charge to the Grand Jury, you will be escorted to the Grand Jury Room, where you will receive bills of indictment you are to consider, and you will prepare to hear witnesses in the cases thus brought to your attention.

## 13. Procedure in the Jury Room

(a) *Quorum*. A Regular Grand Jury consists of not less than five members, and as will be noted later, irrespective of whether the Grand Jury consists of five, six or seven members, at least four must concur in returning "A True Bill" on an indictment.

Should an emergency arise necessitating the absence of a Grand Juror during his service, the Grand Jury should cease deliberations while this fact is reported to the Court.

Business of the Grand Jury should be conducted only when all members are present in the jury room. If it is necessary for a member to temporarily absent himself, a recess should be declared by the Foreman until such member rejoins the group.

(b) *Hearing Witnesses*. The bills of indictment which you are to consider will be delivered to you. It is your duty to determine whether sufficient probable cause exists to require the person accused of a crime in a bill of indictment to stand trial thereon. This you will determine from the testimony of witnesses.

The names of available witnesses in a given case will appear on the bill of indictment. These witnesses will have been duly sworn by the Court to tell the truth while they are in the jury room. You will notify the Court when you are ready to call a particular witness.

Witnesses should be examined one at a time. There is no set manner in which a witness is examined. One appropriate way is for the Foreman

to ask the witness to tell what he knows about the charge against the accused, after which questions may be asked of the witness by any member of the Grand Jury if additional testimony is desired.

All questioning should be impartial and objective, without indicating any viewpoint on the part of the questioner.

It is not necessary to call or hear every witness listed on the bill of indictment in order to return it "A True Bill", i.e., to approve it. It is only necessary to hear as many (one or more) as may satisfy four members of the Grand Jury that sufficient probable cause exists to require the party accused therein to stand trial thereon.

On the other hand, a bill of indictment should not be returned "Not a True Bill", i.e., disapproved, unless every witness listed on the bill of indictment, who is available has been examined.

*(c) Witness Refusal to Testify.* If a witness, when brought before the Grand Jury, refuses to answer a question, the Grand Jury should not press the question or attempt on its own to compel him to answer. The reason for the refusal by the witness may involve the technical issue of whether the question asked violates this witness's constitutional privilege against self-incrimination. If the jury desires to press the matter further, the question should be written out on a sheet of paper, a recess declared, and the matter reported to the Court orally in open Court, whereupon the Court will determine whether the witness is compelled to answer.

*(d) Accused as a Witness.* The accused person named in the bill of indictment will not be listed thereon as a witness, nor will any witnesses favorable to him probably be listed. This is because the Grand Jury does not determine the guilt or innocence of the accused, but only determines whether the testimony of the witnesses produced by the State raises sufficient probable cause to require the accused to stand trial.

If a defendant or other person desires to testify, he must obtain permission from the Court, which will warn him of his privilege against self-incrimination. And even if the Court permits him to testify, the Grand Jury may refuse to hear him unless it is ordered to do so by the Court.

## 14. Determination to Indict or Not

As has been repeatedly stated, the Grand Jury does not sit to determine the guilt or innocence of the accused. The function of the Grand Jury is to determine whether there is sufficient probable cause to require him to stand trial.

Only members of the Grand Jury are in the jury room while it is deliberating and voting.

When the Grand Jury has heard all necessary or available witnesses in a given case, the Foreman will ask the members to discuss and vote on the question of whether or not "A True Bill" should be found on the charge. Every Grand Juror may now comment on the sufficiency of the evidence and express his opinion on the matter.

After each member who desires to speak has been heard, the Foreman will call for a formal vote to ascertain whether there are the requisite number of four affirmative votes.

## 15. Finding of Indictment

An indictment may be found "A True Bill", only upon the affirmative vote of four or more members of the Grand Jury.

If there are sufficient affirmative votes in favor of finding an indictment, the Foreman will endorse the phrase "A True Bill" on the back of the bill of indictment and sign his name as Foreman.

If there are insufficient affirmative votes, the Foreman will endorse the phrase "Not a True Bill" and sign it.

## 16. Special Findings, If Any

After all the bills of indictment have been considered, the Foreman will inquire whether any member of the Grand Jury is of the opinion that a Special Grand Jury should be summoned to investigate any condition which tends to promote criminal activity in the community or which indicates misfeasance of governmental authority by any government agency or an official thereof.

Use of this power should be exercised with extreme caution, because it can be a weapon of oppression. It should not be exercised upon gossip or rumor. On the other hand, if there is a rational basis for the opinion that any such condition exists the Regular Grand Jury should not flinch from a responsibility to report its view to the Court.

### 17. Return of Indictment

After all of the bills of indictment have been considered and the Grand Jury has determined whether it desires to report on any special matter, it will inform the Court that it has concluded its deliberations. It will then present its findings in open court. This will be accomplished by the Clerk of the Court reading the names of the accused persons and, after each name, reading the words "A True Bill" or "Not a True Bill" as endorsed on the indictment by the Foreman of the Grand Jury.

### 18. The Commonwealth's Attorney

So zealous is the law in Virginia of the absolute independence of the Grand Jury and that it be free from any pressure from the state, it is provided by statute that "no attorney for the Commonwealth shall go before any regular grand jury except when duly sworn to testify as a witness, but he may advise the foreman of a regular grand jury or any member or members thereof in relation to the discharge of their duties."

Other than these two exceptions, if a Commonwealth's Attorney appears in the Grand Jury Room while the Grand Jury is there, any indictment returned "A True Bill" by the Grand Jury is invalid. Therefore, while a Grand Jury may request the appearance of the Commonwealth's Attorney to testify as a witness or to explain some principle of law relative to the discharge of their duties, they cannot seek his advice as to whether they should return an indictment as "A True Bill". If a Grand Jury finds that it is in need of advice as to its duties but is in doubt as to the propriety of inviting the Commonwealth's Attorney into the Grand Jury Room to explain, it should notify the Court that it desires further instructions from the Court, and it will receive such instructions in open Court.

### 19. Secrecy

The law provides that "every member of a regular or special grand jury shall keep secret all proceedings which occurred during sessions of the grand jury."

The importance of secrecy of Grand Jury proceedings is multifold.

1. Secrecy protects Grand Jurors from being subjected to pressure by persons who may be



interested in the outcome of Grand Jury action.

2. Secrecy may prevent the escape of persons against whom an indictment is under consideration.
3. Secrecy encourages witnesses to speak the truth freely before the Grand Jury.
4. Secrecy as to what a witness testified to before the Grand Jury prevents the witness from being tampered with between that time and the time he testifies at the trial of the accused.

No more needs to be said as to the importance of a Grand Juror not communicating to his family, to his friends, or to anyone, any matters which took place in the Grand Jury Room.

## 20. Protection of Grand Jurors

The Grand Jury is an independent body answerable to no one except the Court. No inquiry may be made to learn what a Grand Juror said or how he voted. The secrecy surrounding Grand Jury proceedings is of itself one of the major sources of this protection. The law gives a Grand Juror complete immunity for his official acts within his authority as a Grand Juror, regardless of the ultimate result of an indictment found by the Grand Jury.

## 21. Practical Suggestions

Witnesses summoned to testify before the Grand Jury are present frequently at personal, business or official inconvenience. They sometimes come from a distance. Police officers often are called on their "off hours". It is important, therefore, that the business of the Grand Jury be carried on in an expeditious manner—not too slow but not too fast. Some cases may require only one witness and take only a few minutes; others will require much more attention.

The following suggestions are advanced to assist you in carrying out your duties in a fair and expeditious manner.

Pay close attention to the testimony of the witnesses. The reputation or freedom of someone depends on what is being told.

Be courteous to the witnesses and do not cut off their testimony unless it becomes needlessly repetitious.

Listen to the opinions of your fellow jurors, but do not be a rubber stamp. On the other hand, do not try to monopolize the hearing or the deliberations. Be independent, but not obstinate.

Express your opinion, but don't be dictatorial. You may try to persuade another juror, but do not try to force him to change his mind. After all, he may be right and you may be wrong.

Each juror is entitled to be satisfied with the evidence before being called upon to vote. Although your mind may be made up, if others wish to pursue the matter further, do not try to shut off additional testimony or deliberation.

Do not keep silent when the case is under discussion, and then begin to talk about it after the vote is taken.

Do not discuss cases with your fellow Grand Jurors outside the jury room.

Maintain dignity in the proceedings at all times. Moderation and reason, rather than emotion and fervor, lead to justice.

## 22. Compensation

The State does not purport to compensate Grand Jurors in proportion to the valuable service they render. There are several reasons for this. One thing to be avoided is the so-called "professional juror"—a person, usually unemployed, who welcomes (and sometimes even solicits) jury duty solely for the compensation and with little or no regard for the civic responsibility which it entails. Another thing is the cost to the taxpayer. When one recalls that Grand Juries meet in every city and county in the State from four to twelve times a year, it is readily seen that a large expense could result.

On the other hand, while the State hopes that Grand Jurors will serve as a matter of public pride and civic duty, nevertheless, it does not desire Grand Jury duty to be a financial cost to the Grand Juror. The law provides for the compensation of Grand Jurors for each day of attendance, and mileage allowances for travel to and from court. The amount of this compensation is changed from time to time by action of the General Assembly. Each Grand Juror should report his attendance and mileage claim to the Clerk of Court.

### III. THE SPECIAL GRAND JURY

#### 23. Function of a Special Grand Jury

As has been set out in Section 3, a Special Grand Jury is a body composed of from seven to eleven citizens of a city or county, selected by the Circuit Court and summoned to investigate and make report upon any condition which tends to promote criminal activity in the community or which indicates misfeasance of governmental authority by government agencies or the officials thereof.

Other instrumentalities of the government are also equipped to engage in the foregoing function, but the Special Grand Jury, composed entirely of private citizens, is the one non-political body clothed with legal authority to make such investigations.

#### 24. Characteristics

While the function and powers of the Special Grand Jury and those of the Regular Grand Jury differ, many of the observations made earlier concerning the Regular Grand Jury are applicable to the Special Grand Jury. Some of these are its Importance (see Section 4); Origin (see Section 5); Qualifications (see Section 7); Oath (see Section 11); Secrecy (see Section 19); Protection (see Section 20); and Practical Suggestions (see Section 21). Other similarities will be noted later herein.

#### 25. Scope of Investigation

The responsibility of a Special Grand Jury ordinarily will be to investigate a narrow special condition alleged to exist in the community. On the one hand, its duty is to make a full and complete investigation and report on that alleged condition; on the other hand, it is not convened to go on a fishing expedition with respect to other possible illegal conditions which may exist. If during the course of its authorized investigation, some other illegal condition comes to light which the Special Grand Jurors feel needs investigation, it would be appropriate for the Special Grand Jury to call attention to it in its report.

The investigation is to ascertain whether alleged criminal or corrupt conditions exist under present law. The investigation is not to determine whether

the law is good or bad, or whether it needs to be changed. It is possible, indeed, that as a result of the investigation, the law may need to be changed, but that is a legislative matter and a conclusion for the General Assembly of Virginia to make.

There are no time limitations on an investigation by a Special Grand Jury. The complexity of the condition being investigated will dictate the length of time needed.

## 26. Convening

Any citizen or group of citizens may petition the Circuit Court of a city or county to convene a Special Grand Jury. Frequently, the Commonwealth's Attorney will make the request. Also, as noted in Sections 3 and 18, the request may come from a Regular Grand Jury.

If the judge of the Circuit Court decides that a Special Grand Jury should be convened, he will select the names of those to serve, and they will be summoned to appear at a specified time. What was said in Section 9 regarding Exemptions and Excuses from Grand Jury duty is equally applicable to Special Grand Jury service.

On the day appointed, the Circuit Court will cause the Special Grand Jury to be sworn in and will then charge it with the subject it is to investigate. The Court will designate one of those selected to serve as Foreman.

The Special Grand Jury is now ready to begin its work.

## 27. The Commonwealth's Attorney

If the Special Grand Jury was impaneled at the request of the Attorney for the Commonwealth, he may be present at all times during the investigatory stage of the proceedings. If the Special Grand Jury was impaneled at the request of someone else, the Attorney for the Commonwealth may be present only if his presence is requested by the Special Grand Jury.

In either event, if the Attorney for the Commonwealth is present, he may interrogate witnesses only if the Special Grand Jury requests or consents to such interrogation.

The Attorney for the Commonwealth shall not be present, however, at any time while the Special Grand Jury is discussing or evaluating the testimony of a witness among themselves or while the Special

Grand Jury is deliberating in order to reach a decision or prepare its report. However, he may be present during this period if his legal advice is requested by the Special Grand Jury. While he is giving legal advice, the Grand Jurors should not permit him to join in any determination by them of the weight to be given to the testimony of a witness.

The foregoing limitations are incorporated into the law to insure the complete independence of the Special Grand Jury and to protect it against any undue influence from an official of the Commonwealth.

### **28. Special Counsel**

At the request of the Special Grand Jury the Court may designate special counsel to assist it in its work.

### **29. Special Investigative Personnel**

The Special Grand Jury is at liberty to call upon any state or local agency or officer to assist it in its investigation. The nature of the condition being investigated, of course, will dictate the type of investigative personnel needed. If required, the Special Grand Jury may request the Court to provide other specialized personnel to assist it in the investigation.

### **30. Court Reporter**

A court reporter will record and transcribe all oral testimony given by witnesses before the Special Grand Jury. The transcript is for the sole use of the Special Grand Jury and its contents shall not be divulged by anyone.

In a lengthy investigation it would be difficult to remember exactly what an early witness said, hence it is appropriate that the Special Grand Jury have a transcript of his testimony available to which reference may be made during later stages of the work of the Special Grand Jury.

### **31. Subpoena Power**

The Special Grand Jury may cause a summons to be issued ordering a person to appear before it to testify and to produce specified records, papers and documents for examination by the Special Grand Jury. Any desired papers or records must be

described with reasonable accuracy in the summons. The Special Grand Jury is not engaged in a witch hunt or a fishing expedition hoping that a document may turn up; it must have a reasonable belief that a particular record, paper or document does, in fact, exist.

When a summons is desired, the Special Grand Jury may notify the Clerk of the Circuit Court, giving the Clerk the name (and address if known) of the person to be summoned, the date and hour set for his appearance, and if papers are desired, a description of them.

### 32. Warnings Given to a Witness

Before any witness testifies, he shall be given three warnings by the Foreman of the Special Grand Jury:

1. That he need not answer any questions or produce any evidence that would tend to incriminate him; and
2. That the witness may have counsel of his own procurement present when he testifies; and
3. That he may later be called upon to testify in any case that may grow out of the investigation and report of the Special Grand Jury.

If a witness expresses a desire to procure counsel to be present when he testifies, the Special Grand Jury should continue the hearing of this witness to a reasonable date in the future.

### 33. Counsel for the Witness

Any witness appearing before a Special Grand Jury has the right to have counsel of his own procurement present when he testifies. Such counsel shall have the right to consult with and advise the witness during his examination, but he does not have the right to conduct an examination of his own of the witness, unless, of course, the Special Grand Jury requests or permits him to do so.

### 34. Oath of Witness

After the witness has been given the warnings set forth in Section 31, the Foreman will administer the following oath to the witness, having him answer in the affirmative:

Do you solemnly swear (or affirm) that the

evidence you are about to give before the Grand Jury is the truth, the whole truth, and nothing but the truth, so help you God?

### **35. Examination of Witness**

If the Special Grand Jury was convened at the request of the Commonwealth's Attorney, he will have a list of the witnesses whom he desires to present. It would be appropriate, therefore, for the Special Grand Jury to invite the Commonwealth's Attorney to examine the witnesses. After he has completed such examination, any member of the Special Grand Jury should then ask any further questions of the witness that he deems appropriate.

If the Special Grand Jury was convened at the request of someone other than the Commonwealth's Attorney, the Special Grand Jury nevertheless may ask him to be present and conduct the examination, or the Special Grand Jury may request the Court to designate special counsel to assist it and to conduct the examination, or the Special Grand Jury may conduct the examination itself without aid of counsel.

If examination of a witness leads the Special Grand Jury to believe that the testimony of other witnesses may be desirable, a request for a summons for such other witnesses should be made to the Clerk of the Circuit Court as specified in Section 31 of this Handbook.

All questioning of the witness should be impartial and objective, without indicating any viewpoint on the part of the questioner.

### **36. Witness Refusal to Testify**

If a witness refuses to answer a question, reference is hereby made to Section 13 (c) of this Handbook for procedure to be followed by the Special Grand Jury.

### **37. Deliberation**

After all witnesses have been heard, the Special Grand Jury is now ready to deliberate and make its findings on the matter submitted to it by the Court. Only the members of the Special Grand Jury are to be present during this stage of the proceeding, unless at intervals the Special Grand Jury desires the temporary presence of the Commonwealth's

Attorney or Special Counsel to advise it on some legal matter.

Again it should be emphasized that the Special Grand Jury has been convened to investigate and report its findings on some specific isolated condition alleged to exist in the community. Its findings and recommendations, if any, should relate specifically to the subject committed to it. It is not involved in a general moral crusade.

Unlike the Regular Grand Jury, the Special Grand Jury does not return indictments charging individuals with a crime. The Special Grand Jury may indeed find that a person has committed a criminal offense, and if so, it is appropriate for the Special Grand Jury to so report, with or without a recommendation that he be prosecuted. In any event, it is the duty of the Commonwealth's Attorney, subsequent to the Report of the Special Grand Jury, to determine whether a prosecution should be instituted, and if so, to present a bill of indictment to a Regular Grand Jury.

### 38. Findings

Findings should be findings of facts which the Special Grand Jury reasonably believes to exist. It is entirely possible that several or many of such facts are to be considered by the Special Grand Jury and that a vote needs to be taken on each such fact. A majority vote in the affirmative on each such fact is necessary to include it in the Report which the Special Grand Jury will make to the Court.

While no particular procedure need be followed, one appropriate way to proceed would be for individual members to submit to the Foreman such findings as he or she may deem appropriate, and then the Foreman (or some member designated by him) could prepare a composite list of the proposed findings, following which a vote should be taken on each such proposed finding.

### 39. Report

At the conclusion of its deliberation the Special Grand Jury shall prepare a written Report of its findings, including any recommendations it may deem appropriate. This Report, of course, will be the finding of the majority of the Special Grand Jury.



The services of the Court Reporter may be utilized in the preparation of the Report.

If any individual member so desires, he may file a minority report as to any finding in the Report with which he disagrees.

When the Special Grand Jury is ready to file its Report, it should be dated and signed by the Foreman.

#### 40. Transcript, Notes, etc.

After the Special Grand Jury has completed its use of the transcripts prepared for it by the Court Reporter, the Foreman shall direct the Court Reporter to turn over to him all of the notes, tapes or records from which the transcripts were made. The Foreman shall then place the transcripts, notes, tapes and records, in a container and seal the same. A date corresponding to the date on which the Report is filed should then be placed on the sealed container.

#### 41. Filing of Report

When the Special Grand Jury is ready to make its Report, it should notify the Court, and in open Court hand in its Report and the sealed container.

#### 42. Secrecy

It is highly important that the members of the Special Grand Jury should not reveal any of the proceedings held by it nor any contents of its Report. Publication of the Report itself is a matter for the Court.

#### 43. Compensation

See section 22.

### CONCLUSION

Membership on a Grand Jury, Regular or Special, is a high honor. Your service is of great value to your fellow citizens and your time is devoted to one of the most worthy of causes: justice.

It is hoped that this Handbook will make your work easier, more understandable, and more pleasant.



**END**