

## GRAND JURY PROCEEDINGS IN THE STATE OF NEW YORK

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### What is a Grand Jury?

1. A grand jury is a group of regular citizens who decide whether or not there is enough evidence to put a defendant on trial for a crime. The reason for it is that in the past, governments could harass their enemies by putting them on trial for crimes even if they were completely innocent. It dates back to the Assize of Clarendon (1166) when King Henry II changed English law to include grand juries.
2. Our Federal Constitution requires that one may not be put on trial without “probable cause” (good reason) to believe he or she could be guilty. New York and the federal courts use the grand jury. If the grand jury finds sufficient evidence for probable cause, it gives a written statement of the charges against the defendant.
3. A “petit jury”, by comparison, listens to evidence offered during a trial and returns a verdict of guilt or innocence. It dates back to the reign of King Henry III (1216-1272).

### What laws authorize Grand Juries?

4. Under the Fifth Amendment of the U.S. Constitution, “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger”.
5. While the Fifth Amendment guarantee of prosecution by grand jury indictment is a due process requirement that binds the states under the Fourteenth Amendment, States are free to use a preliminary hearing instead where a judge determines whether probable cause exists or not.
6. Forty-eight (48) States, including New York, utilize grand juries to establish evidence of probable cause.

### What unlawful activities do Grand Juries review?

7. In some states grand juries investigate only criminal activity submitted to them by a prosecutor or a court. In others, grand juries, on their own, can investigate any activity that may have violated criminal laws within their venue, usually the county in which they sit. In still others, grand juries investigate specific varieties of criminal activity conducted over broad geographical areas; these are known as “special grand juries”.
8. For the most part state grand juries typically consider crimes such as homicide, sexual abuse, theft, and drug offenses, the legal and factual aspects of which are usually simple and straightforward and familiar to jurors from their personal knowledge.
9. New York Constitution, Article I, § 6 provides, “No person shall be held to answer for capital or otherwise infamous crime (except in cases of impeachment, [certain military offences], and in cases of petit larceny...), unless on indictment of grand jury...”
10. The NY Criminal Procedure Law § 190.55 expands the constitutional requirements under federal law by adding authority to inquire into matters that do not involve criminal conduct. It states:  
“A grand jury may hear and examine evidence concerning the alleged commission of any offense prosecutable in the courts of the county, and concerning any misconduct nonfeasance or neglect in public office by a public servant, whether criminal or otherwise.”
11. Under New York law district attorneys must refer evidence to grand juries regarding:
  - where a defendant is alleged to have committed a felony and is charged by a written felony complaint filed with a local criminal court of that county, and is held for grand jury, except where he or she waives his right to be prosecuted by an indictment; and
  - where a defendant is alleged to have committed a misdemeanor and is charged by a written complaint filed with a local criminal court of the county in any case where a superior court of the county orders that the misdemeanor charge be prosecuted by indictment in a superior court.

12. A New York district attorney may submit evidence concerning an offense prosecutable in the courts of the county concerning misconduct nonfeasance or neglect in public office by a public servant, criminal or otherwise.

### How many persons sit on a Grand Jury?

13. In New York, as in most states, there are no more than 23, 12 needed to decide whether to issue an indictment (a “True Bill”) or dismiss the charges (“No True Bill”). 16 persons forms a quorum.

14. Grand jurors are drawn at random from the same pool of individuals who qualify as petit jurors in the county

15. New York grand juries are impaneled by a county or supreme court.

### Who is eligible for Grand Jury service?

16. A person can be called to serve if:

- A US Citizen
- Over the age of 18
- Have NOT been convicted of a felony
- Able to understand and communicate effectively in English
- A resident of the county to which you are called to serve

### Can jurors be called again?

17. The answer is ‘yes’.

- Jurors who sit for 11+ days, cannot be called again for 8 years
- Jurors who sit for less than 11 days, cannot be called again for 6 years

### Why is secrecy in Grand Jury proceedings necessary?

18. According to the New York Court of Appeals, the policy reasons are to:

- prevent a person who is about to be indicted from fleeing;
- protect the grand jurors from interference by a person under investigation;
- prevent a person under investigation from tampering with prospective witnesses or lying at trial if the grand jury gives an indictment;
- protect an innocent person from unfounded accusations;
- assure prospective witnesses that their testimony will be kept secret so that they will be willing to testify freely.

### Is Grand Jury secrecy absolute?

19. In New York the answer is “no”. A court may issue a written order directing that grand jury information be revealed if the court decides that the public in knowing it outweighs the need to keep it secret.

### What rules of evidence and immunity apply to Grand Juries?

20. In New York the same rules of evidence that apply to criminal trials generally apply to grand juries.

21. Under New York law, transactional immunity (i.e. “blanket” immunity) is granted to every witness who gives evidence to a grand jury. Immunity is automatic, except where: (a) a witness has waived immunity in writing, (b) testimony is not responsive to the inquiry made and is gratuitously given, and (c) what is sought is document production, which does not afford the witness a right against self-incrimination.

### What are the mechanics of a Grand Jury proceeding?

22. Prosecutor submits statement of proposed charges contained in an indictment. If jury finds that the charges are supported by probable cause it can vote to return the indictment a “True Bill”, thereby initiating criminal proceedings against those named therein.

23. A presentment is a written accusation by a grand jury made on its own motion charging a person with one or more criminal offenses. It does not institute criminal proceedings, but obligates the district attorney to investigate the factual background of each presentment and submit bills of indictment when appropriate.

### Who attends a Grand Jury hearing?

24. Court professionals and nonprofessionals.

- 23 Grand Jurors
- Assistant District Attorney
- Defense Counsel (maybe)
- Witness(es)
- Court Officers
- Interpreter
- Clerk
- Video Tape Operator
- Stenographer

### Who may testify before a Grand Jury?

25. Potential defendants and witnesses
- Potential defendant, upon receipt of written request to appear by the district attorney;
    - If a defendant chooses to testify, defense counsel can be present.
    - If DA fails to allow a defendant to testify, the indictment is dismissed.
  - Potential defendants who request to appear on their own;
    - There is no requirement that the defendant testify before a grand jury.
  - Defense witnesses, requested by the defendant orally or in writing; and
    - The grand jury can choose whether or not to hear defense witnesses requested by the defendant.
  - Any other witnesses a DA concludes may present relevant evidence.

### What is expected of a Grand Juror?

26. The same as any regular juror:
- Serve when called
  - Attend every session
  - Dress appropriately – clothes should reflect a dignified occasion
  - Pay attention to directions and evidence presented to you
  - Come to an impartial decision on each case you hear

### Are Grand Jurors permitted to take notes or ask questions during sessions?

27. Absolutely.
- A prosecutor generally reviews the questions first to ensure that they are relevant and proper. This is done on the record.
  - Grand Jurors are encouraged to take notes in order to keep all of the evidence and testimony organized and ready for an ultimate final review

### How do Grand Juries compare with trial juries?

28. They differ widely.

QUESTIONS	GRAND JURY	FELONY TRIAL JURY
How many jurors?	23 jurors and no alternates	12 jurors plus alternates
How long does the jury serve?	Two weeks to three months or more depending on the county	Length of the trial
For how many days do the jurors report?	From every day for two weeks or more to a couple of days a week for several months	Every day until the trial is completed
Who presents evidence?	The prosecution	In addition to the prosecution, the defense may present evidence.
Is a defense attorney present?	No, except if the accused person chooses to testify. They are not permitted to ask questions, make objections or speak to the grand jury.	Yes. The defense attorney is present throughout the trial except in cases where the defendant is acting as his or her own lawyer. The defense attorney takes an active role in the trial.
Is a judge present?	No, except to select the jurors but is not present during presentation of evidence.	Yes. The judge must be present in the courtroom throughout the trial.
What does the jury decide?	Whether or not to formally charge the accused person with a crime	Whether or not the prosecution has proved the defendant guilty beyond a reasonable doubt
How many jurors decide?	16 jurors must be present to deliberate. 12 jurors who have heard all the essential and critical evidence and the legal instructions must agree.	To find a defendant guilty or not guilty a unanimous vote of the 12 jurors is required.
Are the proceedings open to the public?	No. A grand jury's work is done in secret.	Yes. A jury trial is a public proceeding. Only the jury's deliberations are conducted in secret.

### How should a Grand Juror respond if he or she recognizes a witness or an accused?

29. Alert court personnel immediately and await further direction from them

## What compensation do Grand Jurors receive?

30. Yes. \$40 a day, paid by either his or her employer or the court system.

## What are the negatives of Grand Jury review?

31. Grand juries may be inefficient, expensive, and unjust:

- Grand juries are inefficient because grand jurors are not trained in the law. The process, therefore, could lead to confusion.
- In many states, New York excepted, a grand jury may return a True Bill based solely on hearsay evidence.
- The grand jury merely duplicates preliminary hearings held before county courts.
- The grand jury system is expensive, jurors and witnesses receiving fees, though not commensurate with loss of employment time.
- The grand jury system is slow and cumbersome, potential defendants often waiting months, perhaps in jail, for the grand jury to convene and take action.
- Despite historical precedent that grand jurors are selected from the community's "best men", they are frequently far below the average.
- The power entrusted to grand juries is frequently abused, absurd and shocking irrelevancies often becoming subjects of investigation.
- Prosecutions by information produce a higher percentage of convictions than through the grand jury system.
- The information system requires less time and expense.
- Some prosecutors do not prepare their cases until the grand juries return a True Bill.

## What are the positives of Grand Jury review?

32. It safeguards against unwarranted charges

- It acquaints witnesses with legal proceedings as an aid to prosecution, assuring more accurate testimony, and the elimination of cases in which acquittal is likely.
- It can act as an investigating agency having the power to subpoena records, documents, and witnesses making investigations on its own motion (e.g. organized crime).
- It is valuable in uncovering crime.
- It acts as a buffer between public and prosecutor in cases where the public demands action, but the prosecutor concludes that the evidence is insufficient for prosecution.
- It affords citizens an opportunity to observe firsthand judicial proceedings, as well as allowing them to participate in law enforcement.
- It may protect the reputation of one against whom groundless charges are made.
- It may prevent a suspect's flight prior to arrest.
- It may prevent an unscrupulous suspect from building a dishonest defense.

## Have there been any attempts to make the Grand Jury System more Transparent?

33. On July 8, 2015, Gov. Andrew Cuomo signed an executive order making New York the first state to appoint the Attorney General as the special prosecutor to investigate police-involved shootings where a police officer kills an unarmed civilian, or when there is a question if a civilian is armed and dangerous

## Have Judges been Granted Discretion to make the Grand Jury System more Transparent?

34. Judges will be allowed to release most information about grand jury proceedings when there is no indictment, including instructions and testimony

35. Judges oversee grand juries and have an active role – make legal rulings, question witnesses, provide instructions

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