

Directive #12-06
[Supersedes Directive #6-06]

TO: Assignment Judges

[Questions or comments may be directed
to 609-292-2634 or 609-292-4638.]

FROM: Philip S. Carchman, JAD

SUBJ: STANDARD GRAND JURY CHARGE – FOR STATEWIDE USE

DATE: July 20, 2006

This Directive supersedes Directive #6-06, issued April 25, 2006, which promulgated the Standard Grand Jury Charge approved by the Conference of Assignment Judges for statewide use. At its June 27, 2006 meeting the Conference of Assignment Judges made minor revisions to the Standard Grand Jury Charge. That revised version is attached here and supersedes the previous version.

The use of this grand jury charge is mandatory. That is, the text included here is to be used in charging each grand jury. To the extent that there may be certain logistical issues specific to a particular county, the standard charge may be supplemented. But otherwise there should be no variation from the attached text.

Also attached for statewide use is a second related grand jury charge for use in those situations where a presentment is possible. As with the basic standard grand jury charge, there should be no variation from this text except in extremely unusual circumstances. This was made a separate charge since few grand juries confront presentment situations; thus, removing the presentment material from the basic grand jury charge will help better focus the grand jurors on the task at hand. If and when it becomes timely to give the presentment charge, the grand jurors by that point will be better able to process the added information.

The Conference of Assignment Judges developed these charges from draft charges prepared by the Conference of Criminal Presiding Judges. The

Presiding Judges had based their draft on the various grand jury charges previously in use in the counties.

At the risk of being redundant, I would stress again that use of these standard grand jury charges as written is mandatory statewide. I will be providing informational copies of the standard grand jury charge(s) to the Attorney General, the Prosecutors, the Public Defender, and the NJSBA.

Any questions regarding this standard grand jury charge or regarding grand juries in general may be directed to Michael Garrahan, Jury Management (609-292-2634) or to Joseph Barraco, Assistant Director (609-292-4638).

/msg

attachments

cc: Chief Justice Deborah T. Poritz
Criminal Presiding Judges
Theodore J. Fetter, Deputy Admin. Director
AOC Directors and Assistant Directors
Trial Court Administrators
Criminal Division Managers
Marilyn C. Slivka
Michael F. Garrahan
Steven D. Bonville
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STANDARD GRAND JURY CHARGE

**[As Approved by the Conference of Assignment Judges]
[Promulgated by Directive #12-06 (July 20, 2006)]**

Ladies and Gentlemen;

Welcome to your term of service as Grand Jurors. This charge will inform you of your duties and of the responsibilities of being a Grand Juror as well as the principles of law that govern your deliberations.

This charge contains general instructions concerning the discharge of your duties. The court will always be available to provide additional instructions, and you may request them at any time through your foreperson or your clerk.

I recognize that this experience is new for most of you and that it may be difficult to fully absorb the details of this charge and your oath at this time. However, we will provide you with a copy of this charge and your oath.

The primary function of the Grand Jury is to determine what criminal charges may be brought as a result of cases heard by you, and to determine which matters should not be continued in the criminal justice system because there is insufficient evidence for the charges. Criminal prosecutions do not begin merely because someone accuses another of violating the law. There must be an inquiry made by a Grand Jury before an accused person may be brought to trial. The Grand Jury, does not determine guilt or innocence. That is the responsibility of a petit jury. When a case reaches the Grand Jury, evidence concerning the charge is presented, primarily in the form of sworn testimony, and a vote is taken on whether or not to indict.

If you determine that criminal charges should be brought, you will return an indictment. An indictment is simply a formal writing prepared on behalf of the State of New Jersey setting forth the name of the defendant, the alleged criminal conduct, and specifying the criminal statute or statutes of this State allegedly violated by that conduct.

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The Grand Jury is an independent legal institution. It functions under our Constitution as the representative of the community. It is an arm of the court, not part of the prosecutor's office. The Grand Jury does not assist the prosecutor. The prosecutor assists the Grand Jury.

Individual grand jurors are not permitted to conduct an independent investigation of the alleged charges, such as visiting the crime scene. However, you are not limited in your investigations to matters brought to your attention by the prosecutor. As a group, and as determined by a majority of the grand jurors present, you may decide that conditions exist that warrant investigation because you believe a crime has been committed. In that connection, you are empowered to require the production of evidence, to compel witnesses to appear before you, and to return indictments if the evidence justifies that action. The prosecuting attorney is available to advise you on legal questions and, if necessary, you may request additional instructions from the court.

You may act only on the basis of the evidence you receive. You are not to return an indictment unless the State has presented evidence which together with the reasonable inferences you draw from that evidence, leads you to conclude that (1) a crime has been committed and (2) the accused has committed it. Furthermore, when determining whether to return an indictment, you should not consider the potential punishment in the event of a conviction.

The Grand Jury must ensure that no person is subjected to a criminal charge unless there is an adequate basis for it. It is only when you have received such evidence that an indictment may be returned. If an indictment is returned, further judicial proceedings will be required. The defendant is entitled to a public trial by jury, to representation by counsel, to confront the State's witnesses, to testify or choose not to testify, and to present evidence.

In addition to the power to return an indictment, the Grand Jury, under certain circumstances, may return a presentment. A presentment is a formal document presented by you to the public in which you report on findings and recommendations as to some aspect of public affairs or to

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some public evil or condition to which the attention of the community should be directed.

The Grand Jury is an independent investigative body that represents the public and may therefore inquire into matters affecting community morals, health, safety, and general welfare. If the Grand Jury expresses an interest in returning a presentment, the Assignment Judge will be advised and you will receive further instructions.

Your deliberations will be presided over by your foreperson who will administer the oath to witnesses and sign all indictments and presentments. Your deputy foreperson will act in the absence of your foreperson.

The Grand Jury consists of 23 members. Twelve members of the Grand Jury constitute a quorum and the Grand Jury cannot act without a quorum present. The Grand Jury must act as a body; individual jurors have no official authority. Jurors who vote in a case must have been present and have heard all of the evidence presented. Regardless of the number of jurors deliberating and voting in any given case, no person can be indicted and no presentment can be returned unless twelve (12) or more members of the Grand Jury concur.

If the Grand Jurors vote not to return an indictment, the Grand Jury returns what is called a "No Bill" -- meaning that the Grand Jury has determined that there is insufficient evidence to move forward with the criminal charges.

It sometimes occurs that a grand juror has formed an opinion about a case before hearing evidence or may be influenced by a financial or personal relationship to a case, such as being acquainted with a victim, witness, law enforcement officer, a target for possible indictment or anyone else involved in the matter. Because every case must be decided on its own merits, it is inappropriate for your deliberations to be affected by your familiarity with such matters. In such a case you should decide whether or not you should disqualify yourself. If you are not certain whether you should excuse yourself from a case, you are required to inform the

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prosecutor, and a judge will decide whether you should hear that case. If disqualified, you may return to hear other cases.

The Grand Jury must arrive at its conclusions without any outside intervention, including the intervention of the prosecutor, who may not participate in your deliberations or express views on questions of fact. The prosecutor may not comment on the weight or sufficiency of evidence or attempt to influence or direct your findings. The function of the prosecutor is to guide and assist you with the examination of witnesses, assure proper procedures, assure proper admissibility of evidence, and provide explanations of testimony and evidence with reference to the law applicable in the case based upon the evidence that is presented. If for some reason during your deliberations you do not want the prosecutor or the clerk present, you may ask either or both of them to leave the room, and they must comply. These requests are made by the Grand Jury as a group and are to be determined by a majority of the grand jurors present.

Because of the sensitive nature of the matters that come before you, your proceedings must be completely confidential. You must resist any impulse to enhance your own reputation by passing along "inside" information. Therefore, all of your deliberations and discussions must take place in the grand jury room while the Grand Jury is in session. It is improper for grand jurors to confer or deliberate privately by telephone or otherwise concerning Grand Jury matters.

Each grand juror has the right to expect that what is said to fellow grand jurors during deliberations will remain confidential. In that setting, there must be the utmost freedom of expression and debate, uninhibited by fear that any views or expressions will be revealed to others.

This requirement of secrecy is absolutely necessary to the proper administration of justice. It provides assurance that persons under investigation will have no reason to destroy evidence or place themselves beyond the reach of the court. It protects witnesses against reprisals or the threat of reprisals. It prevents unacceptable damage to reputations.

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Under New Jersey law, any unauthorized disclosure of information concerning Grand Jury proceedings with the intent to injure another is a crime punishable by up to 18 months imprisonment. If you are approached by anyone soliciting information concerning the proceedings before you as Grand Jurors, you are to report such attempts at once to the court.

Likewise, if during your service anyone should attempt to influence you in the performance of your duties, it would be a violation of the law on the part of that person. Bring any such conduct to the attention of the clerk of the Grand Jury immediately, so that those making such an attempt may be dealt with properly.

With one exception, all proceedings of the Grand Jury are recorded. The testimony of witnesses can therefore be made available to the defendant and other authorized persons if an indictment is returned. The comments of the Grand Jurors in their discussions and deliberations with each other are not recorded. The opposite is true of discussions between the prosecutor and the Grand Jurors. They are recorded to ensure that everything the prosecutor says to a Grand Jury may be known to all concerned. The names of grand jurors are not contained in the transcript of the proceedings. For example, if a grand juror asks a question of a witness, the grand juror will not be identified by name.

The Clerk of the Grand Jury will make and keep a record of the vote of each Grand Juror, by name, on each matter presented for consideration, but this record will not be made public except on the order of the Assignment Judge.

Under our law an indictment is not official until it is presented in open court to me or to my designee. Normally, indictments are returned only by the foreperson or the deputy foreperson. If the Grand Jury votes not to indict in a particular case, the "No Bill" is also returned to the court, so that the person charged may be so informed and, if necessary, may be released immediately from custody or bail.

In conclusion, ladies and gentlemen, thank you for accepting this opportunity to serve. I remind you of the importance of your duties. In our

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country, where the stability of the court rests upon the approval of the people, it is essential that the system for dispensing justice be so conducted and maintained that the public has absolute confidence in its integrity, impartiality, and efficiency. You need only to obey your oath of office to be certain your actions will inspire that confidence. Please give careful and impartial consideration to every matter that is presented. Every case is important. It is important to the individual who may be involved and it is important to the community.

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N.J.S.A. 2B:21-3
OATH OF JURORS

“Do you as a member of this grand jury of the State of New Jersey and the County of _____ swear or affirm that you will support the Constitution of the United States and the Constitution of this State; that you will diligently inquire into all matters brought before you to the best of your skill, knowledge and understanding; that you will take no action through envy, hatred, or malice nor for fear, favor or affection, or for reward or the hope of reward; that you will make a true presentment of all matters coming before you, and that you will keep secret the proceedings of the grand jury?”

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STANDARD SUPPLEMENTAL CHARGE FOR GRAND JURIES REGARDING PRESENTMENTS

**[As Approved by the Conference of Assignment Judges]
[Promulgated by Directive #12-06 (July 20, 2006)]**

When I charged you at the beginning of your grand jury service, I instructed you briefly about the grand jury's ability to return a presentment and briefly explained how it differed from an indictment or a no-bill. I also informed you that I would instruct you in greater detail should you indicate that you wanted to consider a presentment. I shall now provide that additional instruction.

A presentment is a formal document presented by you to the public to call to the community's attention your recommendations as to some aspect of public affairs or conditions.

The Grand Jury is an independent investigative body that represents the public and may therefore inquire into matters affecting community morals, health, safety and general welfare. In this connection you may inspect and visit public institutions, agencies, buildings, and departments. If you find unsatisfactory conditions that are of such importance that they should be brought to the attention of the public and the officials concerned, you may return a presentment for that purpose.

You may, for example, determine that there are certain conditions in a public office or public institution which demand correction or improvement and which should be revealed to the public for that purpose, even though the evidence does not reach the level of constituting criminal conduct which would normally warrant an indictment. In other words, a presentment generally deals with non-criminal conduct.

To investigate such matters you have the same broad, comprehensive and independent powers previously discussed. In an investigation that may lead to a presentment, you may cause witnesses to appear before you, and

again you are not limited simply to a consideration of matters that are presented to you by the prosecutor.

Unlike an indictment, a presentment is not the beginning of a criminal process and does not result in trials of individuals. A person who is named in a presentment has no defense nor any way of answering the presentment except under very limited technical procedures. For this reason, presentments require the exercise of sensitive judgment on your part, as well as a review by the Assignment Judge before they can be made public. If the public should be made aware of a condition that is caused by the non-criminal misconduct of a public official, that individual may be named and criticized. Before such a presentment seeking censure of an individual is approved, you must be satisfied that the proof of such wrongdoing is conclusive to show that the conduct of the individual is unquestionably related to the undesirable condition reported upon. Criticism of a public official is allowable only where it is closely associated with the need to draw critical attention to the undesirable public condition. It would not be fair to name a person unjustifiably in a presentment and perhaps destroy that person's reputation and standing in the community.

And so, as a matter of fundamental fairness, if you return a presentment naming and censuring a specific individual, it will not be made public until I, as Assignment Judge, obtain and review the full record of the testimony and exhibits and determine that sufficient evidence has been presented to support such charges.

If the Assignment Judge determines that the presentment is proper, it will be filed with the clerk of the court and disclosed to the public. Please be aware that the secrecy provisions relating to your service as a grand juror also prevent you from disclosing any matters relating to a presentment.