



MINNESOTA
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Minnesota Grand Jury Guide

For Court Administration Staff

December 2011

Minnesota Grand Jury Guide

Acknowledgements

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Notice

While every attempt has been made to cite the relevant legal authority where appropriate, this Guide is intended to be used by court administrative staff solely as an informational guide to assist with the business processes related to grand jury proceedings. THIS GUIDE IS IN NO WAY INTENDED TO BE A LEGAL DOCUMENT OR TO PROVIDE LEGAL ADVICE OR OPINIONS RELATED TO GRAND JURY PROCEEDINGS. If at any point legal issues are raised relating to the grand jury process, do not rely on this document to answer legal questions. Rather, refer any legal issues or questions to the judge.

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I. Purpose of Convening a Grand Jury in Minnesota

A. Overview

The primary function of a grand jury is to review evidence presented by a prosecutor and determine whether there is probable cause to return an indictment.

In Minnesota, grand juries perform the following functions:

- **Bring charges.** Indictments must be used by a prosecutor if the offense charged is punishable by life imprisonment (Minn. Stat. §§ 609.185; 609.385), and may, at the option of the prosecutor, be used in other cases. Minn. R. Crim. P. 17.01.
- **Inquiries regarding prisons and public officials.** Pursuant to Minn. Stat. § 628.61, the grand jury shall inquire into:
 - The condition of every person imprisoned on a criminal charge in the county, and not indicted;
 - The condition and management of the public prisons in the county; and
 - The willful and corrupt misconduct of all public officials holding office in the county.

B. Prosecutor Presents Evidence

The prosecutor presents evidence in order to establish there is probable cause to believe an offense has been committed and the defendant committed it. Grand juries give prosecutors the ability to subpoena witnesses, who have to testify under oath, and to subpoena the production of evidence. The evidence can be almost anything – testimony from witnesses, documents, video recordings, tape recordings, the results of scientific tests, photographs, etc.

C. Grand Jurors Vote

After the grand jury hears the prosecutor's evidence, the jurors vote on a set of proposed charges known as an 'indictment' which the prosecutor has drafted and gives to the grand jurors. The prosecutor leaves the jurors alone to decide if the evidence establishes probable cause to believe the person or people named in the indictment have committed the crimes charged.

D. Grand Jury Returns 'Indictment' or 'No Bill'

In Minnesota, a grand jury must consist of not more than 23 or fewer than 16 persons, and must not proceed unless at least 16 members are present. A minimum of 12 grand jurors must vote for an 'indictment' in order to 'return a true bill.'

If 12 grand jurors do not agree that the prosecutor's evidence establishes probable cause, no indictment is issued—this is known as 'returning a no bill.' If the grand jurors do not vote to return an indictment, no criminal charges result.

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II. Secrecy of Grand Jury Proceedings

A. Overview

Pursuant to Minn. R. Crim. P. 18.07, “no one may disclose matters occurring before the grand jury unless directed to do so by the court in connection with a judicial proceeding. Unless the court otherwise directs, no person may disclose the finding of an indictment until the defendant is in custody or appears before the court”

Under Minn. Stat. § 628.68:

Except as otherwise provided in rule 18.0[7] of the Rules of Criminal Procedure, every judge, grand juror, county attorney, court administrator, or other officer, who, except in the due discharge of official duty, shall disclose, before an accused person shall be in custody, the fact that an indictment found or ordered against the accused person, and every grand juror who, except when lawfully required by a court or officer, shall willfully disclose any evidence adduced before the grand jury, or anything which the juror or any other member of the grand jury said, or in what manner any grand juror voted upon any matter before them, shall be guilty of a misdemeanor.

B. What Precautions Should Be Taken by Courts to Ensure Secrecy of Grand Jury Proceedings and Documents?

1. Notify staff that grand jury proceedings are secretive and should not be disclosed to anyone.

When an order or request to convene a grand jury is received in the court administrator’s office, staff should be reminded that all grand jury proceedings are secret as provided in Rule 18 of the Minnesota Rules of Criminal Procedure and in Minn. Stat. § 628.68. Additionally, court staff should be reminded that a grand jury indictment should not be disclosed to anyone until the defendant is in custody or appears before the court. The fact that no indictment was returned is also confidential and should not be disclosed to anyone. Any person who discloses information prematurely is subject to misdemeanor prosecution. *See* Minn. Stat. § 628.68.

Recommended External Communication: “I cannot comment on anything having to do with a grand jury proceeding pursuant to Rule 18.07 in the Minnesota Rules of Criminal Procedure.”

2. Remind staff that subjects or subject matter of grand jury proceedings should never be identified on MNCIS or in any other indexes or record-keeping devices within the court administrator’s office.

Any business practices that identify subjects of grand jury proceedings on MNCIS or in any other indexes or record keeping devices within the court administrator’s office are **strictly prohibited**. Under no circumstances should the subject or subject matter of grand jury proceedings be added as a ‘topic’ on the party tab or record in MNCIS or in any other record-keeping device, index or court calendar that may be viewed by the public or others.

C. Limits on Public Access to Grand Jury Proceedings

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1. Advise court staff on limits of access to grand jury documents and proceedings.

Grand jury documents and proceedings are not accessible to the public, nor to the defendant, unless authorized by court order.

See **Access to Case Records Table** information relating to grand jury documents and proceedings

(<http://www.mncourts.gov/?page=511#publicAccess>):

Criminal	<u>Grand Jury Indictment</u> . Applies to indictment and related warrant or summons only. (For all other records relating to grand juries, see Grand Jury Proceedings, below)	No Public Access until defendant is in custody or appears before the court.	R.Crim.P. 18.05; 18.0[7].
Criminal	<u>Grand Jury Proceedings</u> . All records, except indictment (see Indictment, above), of grand jury proceedings, including transcript and fact that no indictment was returned (often referred to as "no-bill"). Also includes a petition or request by the county attorney to convene a grand jury, and any resulting court order or memo granting or denying the request.	No Public Access. NOTE: No access by defendant unless authorized by court order.	R.Crim.P. 18.05; 18.0[7]; <i>In re Grand Jury of Hennepin County</i> , 271 N.W.2d 817 (Minn. 1978); <i>In re Grand Jury of Wabasha County</i> , 309 Minn. 148, 244 N.W.2d 253 (1976).

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III. Filing Grand Jury Documents

A. Mandatory Filings

Court Administrators must file the following grand jury documents:

1. Indictments. Under Minn. Stat. § 628.09:

When an indictment is found, it shall be immediately presented by the foreperson, in the presence of the grand jury, to the court, filed with the court administrator, recorded . . . as soon as the arraignment shall have been made, and remain in the court administrator's office as a public record.

MNCIS procedure for filing a Grand Jury Indictment:

<http://mncourts.gov/mncishelp/CM/Custom/MNCIS/Home.htm>

(Path: Criminal/Traffic --> Criminal/Traffic Case Processing → Grand Jury Indictment)

Important Notes Regarding Confidential Nature of Grand Jury Filings: Delivery of the indictment in open court does not mean that it must be read or disclosed in court. See Minn. R. Crim. P. 18.06. The indictment remains “secret” until after the named defendant is in custody or appears before the court; however; the prosecutor may make a disclosure to the defendant or defense attorney if the prosecutor deems such notice adequate to insure the defendant’s appearance. Minn. R. Crim. P. 18.07. Any other person who discloses information prematurely is subject to misdemeanor prosecution. See Minn. Stat. § 628.68.

If no indictment is returned, the fact that no indictment was returned is also confidential. “Charges filed against the defendant for offenses on which no indictment was issued must be dismissed.” Minn. R. Crim. P. 18.06.

2. Grand jury transcript, if permitted or ordered (See Minn. R. Gen. Prac. 707, effective January 1, 2010).

Minn. R. Gen. Prac. 707 was amended, effective January 1, 2010, to provide rules for filing and maintaining transcripts of grand jury proceedings in the limited circumstances where transcription is permitted or ordered. Under Rule 707:

- a) Court reporters and operators of electronic recording equipment must file the stenographic notes or tape recordings of grand jury proceedings at the conclusion of grand jury hearings. Court administrators must file and maintain these items in a non-public portion of the file. This file serves as a repository for notes, records, or transcripts from that proceeding. The court reporter or operator may retrieve the notes or recordings, if necessary.
- b) All original grand jury transcripts must be filed within 60 days of request by the court or prosecutor or receipt of a court order directing transcription; the transcripts should be made available to parties other than the court or prosecutor only as provided in the court order. Court administrators must also file and maintain grand jury transcripts in a non-public portion of the file.
- c) The court and prosecutor may obtain access to grand jury records and may request a transcript. No charge may be assessed for preparation of a transcript for the district court’s

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use. Any other person ordering a transcript, as allowed by court rule, shall be at the expense of that person.

Under the Rules of Criminal Procedure, the court may order that defendant or defense counsel may obtain a transcript of certain grand jury testimony; the court may enter a protective order to prohibit further disclosure of the grand jury transcript. Minn. R. Crim. P. 18.04, subds. 1 and 2.

Transcripts ordered by the defendant or defense counsel shall be prepaid except when the defendant is represented by the public defender or assigned counsel or when the defendant makes a sufficient affidavit of inability to pay and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.

- d) If no district court file exists, the administrator shall open a “grand jury file” upon the request of the prosecutor. A “grand jury file” is construed to mean a confidential, administrative file in MNCIS.

B. Non-Mandatory Filings

1. **Minnesota law does not require that grand jury documents such as the ‘request’ or ‘petition’ or ‘order’ to convene a grand jury be filed with the court administrator. Filing practices vary across the state on how grand jury documents, which are not required to be filed, are kept by court administrators. In some counties, the request, petition or order to convene the grand jury is kept in a confidential folder/envelope with the grand juror records and no court file is initiated on MNCIS, while other court administrators have chosen to initiate a confidential, administrative file on MNCIS in which to file grand jury documents.**

If the court administrator chooses to initiate a court file, the recommendation is to create a confidential administrative file in MNCIS in which to file the ‘other’ grand jury documents. When filing these miscellaneous documents in the administrative file, keep entries relating to grand jury proceedings non-identifying and simple (i.e. <date>, Order to Convene GJ). No case processing should be done for grand jury proceedings in this file, and under no circumstances should the subject of a grand jury investigation be added to the party record or as a topic in the administrative file.

See the prescribed use of the MNCIS ‘Administrative File’ relating to grand jury proceedings:

<http://mncourts.gov/mncishelp/CM/Custom/MNCIS/Home.htm>

(Path: Home→Civil→Civil Case Initiation→Civil Case Types)

Administrative File	<p>Use when a county needs to record information that is unrelated to a specific case in their county. An example is indexing non-case related orders and search warrants.</p> <p>Note: When a Petition for Order to Convene a Grand Jury and Order to Convene a Grand Jury are filed, a confidential Administrative File is created if no case exists for the matter. Change the <u>case security</u> to "Confidential" at initiation.</p>	<p>Replaces TCIS Case Type: ADM (Administrative File)</p> <p>Note: Until all counties are on MNCIS Odyssey, an Administrative File may be opened to place an out-of-county case on the court calendar.</p>
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	<p>Note: Administrative Files do not count as case filings. No case processing should be entered on an Administrative File.</p>	
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IV. Summoning Grand Jurors

A. Quorum of Grand Jurors Needed to Conduct Business

A grand jury must consist of not more than 23 nor fewer than 16 persons, and must not proceed unless at least 16 members are present. Minn. Stat. § 628.41, subd. 1; Minn. R. Crim. P. 18.02, subd. 1

B. How Grand Jurors are Drawn

One or more grand juries must be drawn at least annually. The grand jury must be summoned and convened whenever required by the public interest, or whenever requested by the County Attorney. On being drawn for grand jury service, each juror must be notified of the selection. Minn. R. Crim. P. 18.01, subd. 1

C. How Grand Jurors are Selected

The grand jury pool must be drawn from a list composed of the names of persons selected at random from a fair cross-section of the statutorily qualified residents of the county; in St. Louis County, a grand jury pool must be selected from residents of each of the 3 districts of St. Louis County. Minn. R. Crim. P. 18.01, subd. 2

Minnesota grand jurors are drawn from the same pool of potential jurors as are the other jury panels for petit jury trials, and in the same manner. The pool consists of names gathered from the Minnesota voter's registration list and driver's license list which includes names of state identification card holders.

See Attachment A – Minnesota Standardized Grand Juror Summons and Instructions¹

D. Terms of Service

Pursuant to Minn. R. Crim. P. 18.08, subd. 1, a pool of grand jurors must be drawn for a specified period of time, not to exceed 12 months, as designated by court order. A grand jury panel must not be discharged, and its powers must continue until the latest of the following:

- a) The period of service is completed;
- b) Its successor is drawn; or
- c) It has completed an investigation, already begun, of a particular offense.

E. Can a Grand Juror Be Excused from Serving on a Grand Jury?

1. **Qualification for Service.** Prospective grand jurors, like petit jurors, may be disqualified or excused from jury service by a jury commissioner pursuant to the limitations set in Minn. R. Gen. Prac. 808.
2. **Excused from Service.** Eligible persons who are summoned may be excused by the jury commissioner from jury service pursuant to Minn. R. Gen. Prac. 810(b) only if:

¹ Refer to Next Generation Manual, Chapter 2 for instructions on how to prepare and send grand jury summons.

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(1) their ability to receive and evaluate information is too impaired that they are unable to perform their duties as jurors and they are excused for this reason by a jury commissioner or a judge;

(2) they request to be excused because their service would be a continuing hardship to them or to members of the public and they are excused for this reason by the jury commissioner.

3. **Excused for Cause.** The court may excuse a juror temporarily or permanently, for cause shown; the court may impanel another person in place of the excused juror. Minn. R. Crim. P. 18.08, subd. 2. If an objection to an individual grand juror is made, the prosecutor may ask for a hearing before the judge to determine if the juror should be excused. *See* Minn. Stat. § 628.54 (grounds for objection to grand juror). This is generally done outside of the grand jury proceeding, in front of a court reporter with a clerk recording the proceeding. *(When the juror is sworn, use the Oath for Challenged Grand Jurors in Section VII.)*

Note: Jurors who have been qualified for service under Minn. R. Gen. Prac. 808, and have not been excused under Minn. R. Gen. Prac. 810(b), may only be excused by the presiding judge. A juror may ask to be excused for various reasons, such as a personal emergency or because they know a witness or some other person involved in the matter. Such qualified jurors who have been instructed to report for grand jury service or who are impanelled and ask to be excused should not be excused by court staff. Rather, qualified jurors should only be excused by the judge who presides over the grand jury proceeding. If a juror asks to be excused, take down the juror's information and refer the juror's request to be excused to the presiding judge. Tell the juror you will notify him/her of the judge's decision when you receive it. If the juror is excused, you should ask the judge if another juror should be impaneled in his or her place.

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V. Who may be Present at Grand Jury Proceedings?

A. Pursuant to Minn. R. Crim. P. 18.03, the following persons may be present during grand jury proceedings

1. Persons Who May be Present:

Prosecutors, the witness under examination, qualified interpreters for witnesses disabled in communication, or for jurors with a sensory disability, and for the purpose of recording the evidence, a reporter or operator of a recording instrument may be present while the grand jury is in session. No person other than the jurors and any qualified interpreters for any jurors with a sensory disability may be present while the grand jury is deliberating or voting.

2. Designated Peace Officer May be Present:

On the court's order and a showing of necessity, for security purposes, a designated peace officer may be present while a specified witness testifies.

3. Attorney for Witnesses May be Present:

If a witness at the grand jury requests, and has effectively waived the privilege against self-incrimination, or has been granted use immunity, the attorney for the witness may be present while the witness testifies, provided the attorney is present for that purpose, or the attorney's presence can be secured without unreasonably delaying the grand jury proceedings. The attorney cannot participate in the grand jury proceedings except to advise and consult with the witness while the witness testifies.

4. Parent or Guardian of Person Under 18 Years Of Age May Be Present:

By order of the court based on a particularized showing of need, a witness under the age of 18 may be accompanied by a parent, guardian or other supportive person while that child witness testifies at the grand jury. The parent, guardian or other supportive person must not participate in the grand jury proceedings, and must not be permitted to influence the content of the witness's testimony.

In choosing the parent, guardian or other supportive person, the court must determine whether the person is appropriate, including whether the person may become a witness in the case, or may exert undue influence over the child witness. The court must instruct the person on the proper role for that person in the grand jury proceedings.

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VI. Roles and Responsibilities of Grand Jury Participants

A. Judge's Role and Responsibilities in Grand Jury Proceedings

(This section is only intended to illustrate what the judge's role is in grand jury proceedings, and is intended to be an informational guide, not a directive. Local practices may vary.)

Judges may want to refer to the Minnesota Judges' Criminal Benchbook for additional information at Chapter 2, Section 204.

1. Pursuant to Minn. Stat. § 628.56 the judge shall:

- a) Appoint a foreperson, and shall also appoint an alternate or replacement foreperson when the previously appointed one is discharged or excused before the paneled grand jury is dismissed.
- b) Swear in the grand jurors and give the oath to any grand juror who appears afterwards.
- c) Charge the grand jury and read the provisions of sections of Minn. Stat. §§ 628.01, 628.02, 628.60 to 628.66; and Minn. R. Crim. P. 18.05, subds. 1 and 2, and 18.07.
- d) Give such other information as may be deemed proper to the nature of grand juror's duties, and any charges for public offenses returned to the court, or likely to come before the grand jury.

See Attachment B – Example of District Court Judge's Instructions and Model Script When Empanelling a Grand Jury. *(This is only an example. Each judge may use their own instructions and scripts.)*

2. **When the grand jury ends its deliberations**, any indictment must be signed by the foreperson, and delivered to the judge in open court.² Minn. R. Crim. P. 18.06. The judge will typically ask the foreperson if the grand jury has completed the work submitted to them.

Note: Under Minn. R. of Crim. P. 18.06, an indictment may only issue if at least 12 jurors concur. The indictment must be signed by the foreperson, whether the foreperson was one of the 12 who concurred or not. If 12 jurors do not concur in issuing an indictment, the foreperson must promptly inform the court in writing.

Finding and 'Return of Indictment,' The judge will instruct the court administrator to file the indictment.

If the defendant is in custody, the judge will direct the court administrator to set a time for the defendant's first appearance.

If the defendant is not in custody,³ "the court must issue a warrant for the arrest of each

² Delivery of the indictment in open court **does not mean that it must be read or disclosed in court.** See Minn. R. Crim. P. 18.06, 18.07.

³ The indictment remains "secret" until after the named defendant is in custody or appears before the court; however, the prosecutor may make a disclosure to the defendant or defense attorney if the prosecutor deems such notice adequate to insure the defendant's appearance. Minn. R. Crim. P. 18.07. Any other person who discloses information prematurely is subject to misdemeanor prosecution. Minn. Stat. § 628.68.

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defendant named in the indictment, except that the court may issue a summons instead of a warrant when the prosecutor requests or the court directs, or if the defendant is a corporation.” Minn. R. Crim. P. 19.01.

Finding and ‘Return of No Bill.’ “Charges filed against the defendant for offenses on which no indictment was issued must be dismissed.”⁴ Minn. R. Crim. P. 18.06.

Note: “The failure to issue an indictment or the dismissal of the charge does not prevent the case from again being submitted to a grand jury as often as the court directs.” Minn. R. Crim. P. 18.06. The effect of a dismissal of an indictment under Minn. R. Crim. P. 18.09 is covered by Minn. R. Crim. P. 17.06, subd. 4.

⁴ If no indictment is returned, the fact that no indictment was returned is also confidential.

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B. County Attorney's Role and Responsibilities in Grand Jury Proceedings

(This section is only intended to illustrate what the county attorney's role is in grand jury proceedings. It is not intended to be a directive, but rather an informational guide. Local practices may vary.)

1. A grand jury may be summoned whenever required by the public interest or requested by the county attorney. Minn. R. Crim. P. 18.01, subd. 1.

Note: Indictments must be used by a prosecutor if the offense charged is punishable by life imprisonment (Minn. Stat. §§ 609.185; 609.385; 609.3455), or involves misconduct of a public officer (Minn. Stat. § 628.61), and may, at the option of the prosecutor, be used for any other offense defined by state law. See Minn. R. Crim. P. 17.01, subd. 1.

2. Prosecutor duties prior to grand jury proceedings:

- a) File an Order/Petition/Request/Notice to Convene the Grand Jury with the court administrator;
- b) Coordinate and set place, date and time for grand jury session with court administrator and/or judge instructing and charging the grand jury;
- c) Procure a court reporter or operator of a recording device to make a verbatim record of all statements made, evidence taken, and events occurring before the grand jury, except during deliberations and voting (see Minn. R. Crim. P. 18.04, subd. 1);

Note: The Minnesota Rules of Court and Minnesota Statutes are not clear on who is responsible for hiring or paying for a court reporter or operator of a recording device for grand jury proceedings. Arrangements for procuring a court report or operator of a recording device for a grand jury investigation should be coordinated between the County Attorney and Court Administrator.

See **Attachment C - District Court Practices for Hiring Court Reporters for Grand Jury Investigations** (Survey of District Court Practices conducted by the Judicial Branch's Human Resources Department in 2008.)

- d) Notify the court administrator if grand jury witnesses need a court interpreter;
- e) Request subpoenas for grand jury witnesses (*Under Minn. R. Crim. P. 22.02, subd.3, grand jury subpoenas must be issued by the court administrator*);
- f) Make arrangements for bailiff(s). In general, bailiffs do not attend jury sessions, but rather sit outside to insure that only those who are allowed access may enter. A bailiff is not allowed to attend a grand jury session, unless there is an order permitting the presence of a designated peace officer for the purpose of security while a specified witness is testifying before the grand jury. See Minn. R. Crim. P. 18.03;

Note: The Minnesota Rules of Court and Minnesota Statutes are not clear on who is responsible for making arrangements for procuring a bailiff for grand jury investigations. This responsibility should be coordinated between the County Attorney and Court Administrator.

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- g) Coordinate logistical details for grand jury room with court administrator (e.g., length of session(s), seating arrangements, notebooks, pencils, coffee, etc.)
- 3. Prosecutor duties during grand jury proceedings** (generally Minn. Stat. §§ 388.051; 628.63):
- a) Attend grand jury sessions for the purpose of giving legal advice, and framing indictments by presenting evidence or examining witnesses in the grand jury's presence;
- Note: Any evidence presented to the grand jury by the prosecutor should not be filed with the Court Administrator as 'exhibits.'** Evidence may include witness lists; written statements; documents and tangible objects such as books, papers, documents; photographs; law enforcement officer reports; the location of buildings and places; reports on prospective jurors; reports of exams or tests; etc.
- Under Minn. R. Crim. P. 9.01 , 18.04, subds. 1 and 2, and 19.04, subds. 6 and 7, the prosecutor is obligated to make certain disclosures to the defense. .
- b) Request the court administrator to issue subpoenas to produce evidence or bring witnesses before the grand jury (*Under Minn. R. Crim. P. 22.02, subd.3, grand jury subpoenas must be issued by the court administrator*);
 - c) Draw indictments found by the grand jury and prosecute defendants to the extent prescribed by law.
- 4. Prosecutor duties after grand jury deliberations have ended:**
- a) Notify the court administrator that grand jury deliberations have ended;
 - b) File indictments with the court administrator; and
 - c) Gather and safe keep evidence presented to the grand jury.

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C. Court Administrator's Role and Responsibilities in Grand Jury Proceedings

1. Prepare for the Grand Jury Session:

- a) Receive the Order/Petition/Request/Notice to convene a grand jury from the county attorney and deliver it to the judge who will be instructing and empanelling the grand jurors.
- b) Coordinate and set place, date and time for grand jury session with the judge and county attorney; allow enough lead time to prepare and send summons/notice to grand jurors.
- c) Randomly draw and summon 23 grand jurors for a grand jury session.⁵ If jurors ask to be excused either before or during the sessions, refer requests to the judge (and prosecutor, depending on local practice).
- d) Inform court staff of the secrecy of grand jury proceedings and filings, and penalties for disclosure. (*Refer to Section II – Secrecy of Grand Jury Proceedings*)
- e) Coordinate hiring of court reporter or operator of electronic recording device with county attorney.

Note: The Minnesota Rules of Court and Minnesota Statutes are not clear, and district practices vary, on who is responsible for hiring or paying for a court reporter or operator of a recording device for grand jury proceedings. Arrangements for procuring a court reporter or operator of a recording device for a grand jury investigation should be coordinated between the County Attorney and Court Administrator. Refer to **Attachment C** for district practices.

See Attachment C - District Court Practices for Hiring Court Reporters for Grand Jury Investigations (Survey of District Court Practices conducted by the Judicial Branch's Human Resources Department in 2008.)

- f) Make arrangements for bailiff(s) as requested by judge or county attorney.

Note: In general, bailiffs do not attend grand jury sessions, but rather sit outside to insure that only those who are allowed access may enter. A bailiff or officer is not allowed to attend a grand jury session, unless there is an order permitting the presence of a designated peace officer for the purpose of security while a specified witness is testifying. *See Minn. R. Crim. P. 18.03.*

- g) Prepare blank, signed grand jury subpoenas, as requested by the county attorney. (*Under Minn. R. Crim. P. 22.02, subd.3, grand jury subpoenas must be issued by the court administrator.*)
 - i. "The court administrator issues a subpoena under the court's seal, signed but otherwise blank, to the attorney for the party requesting it, who must fill in the blanks before service. The subpoena must state the name of the court and the

⁵ A grand jury must consist of not more than 23 nor fewer than 16 persons, and must not proceed unless at least 16 members are present. *See Minn. Stat. § 628.41, subd. 1; and Minn. R. Crim. P. 18.02, subd. 1.*

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title of the proceeding if the subpoena is for a hearing, trial, or deposition.”
Minn. R. Crim. P. 22.02, subd. 1.

- ii. “A grand jury subpoena must be captioned “In the matter of the investigation by the grand jury of_____.” (Insert here the name of the county or counties conducting the investigation.)” Minn. R. Crim. P. 22.01, subd. 4.
- iii. “The subpoena must command attendance and testimony at the time and place specified.” Minn. R. Crim. P. 22.01, subd. 1.

- h) If requested by the county attorney, procure court interpreters for grand jury witnesses.
- i) If grand jurors request accommodation due to a sensory disability, procure the necessary auxiliary aide or interpreter for the juror requesting the accommodation.

See Attachment D - Ensuring Effective Communications with Prospective Jurors Who are Deaf or Hearing Disabled

- j) Prepare and deliver the juror profile list and/or qualification questionnaires to the judge prior to the grand jury session to assist the judge in appointing a foreperson. (*Local practices may vary.*)
- k) Coordinate logistical details for grand jury room with county attorney (e.g., length of session(s), seating arrangements, notebooks, pencils, coffee, etc.)

2. During the grand jury session:

- a) If directed by the presiding judge, a courtroom clerk may accompany the judge to the grand jury room or courtroom to take notes as the judge instructs and empanels the grand jury. (Local practices vary on whether or not a courtroom clerk attends and takes notes.) The courtroom clerk’s notes are not considered part of the “verbatim record” taken by the court reporter or recording equipment operator. See Minn. R. Crim. P. 18.04, subd. 1. The courtroom clerk’s notes are considered personal notes for the use of the presiding judge.
- b) Take and record juror attendance; process juror payments.
- c) Keep track of all expenses incurred, such as service, mileage, witness fees, etc. The court may order that expenses incurred by the county attorney be assessed to a defendant if an indictment is issued and conviction is entered. See Minn. Stat. § 631.48.
- d) Do not discuss grand jury information, keep the sessions secret. (*Refer to Section II – Secrecy of Grand Jury Proceedings*)

3. When the grand jury ends deliberations:

- a) Notify the judge that deliberations have ended.
- b) Accompany the judge to the grand jury room or courtroom; the judge will typically ask the foreperson if the grand jury has completed the work submitted to them.
 - i. If an indictment is issued by the grand jury, the judge will review the indictment and then ask the foreperson if the indictment reflects the will of the grand jury.

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If affirmed by the foreperson, the judge will instruct the court administrator to file the indictment. (*Refer to Section III – Filing Grand Jury Documents, A.1. for filing Indictments in MNCIS.*)

- ii. If there is no indictment, the written statement of ‘no bill’ should be kept by the court administrator in a confidential file/envelope. (*Refer to Section II – Secrecy of Grand Jury Proceedings*)
- c) If the defendant is in custody, the judge will direct the court administrator to set a time for defendant’s first appearance. If the defendant is not in custody, the fact that an indictment was returned should not be disclosed to anyone. The Indictment should be kept confidential until the defendant is in custody or appears in court. (*Refer to Section II – Secrecy of Grand Jury Proceedings, and Section III – Filing Grand Jury Documents, A. 1. for filing Indictments in MNCIS.*)

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D. Court Reporter or Recording Equipment Operator's Role and Responsibilities in Grand Jury Proceedings

(This section is only intended to illustrate what the court reporter's role is in grand jury proceedings. It is not intended to be a directive, but rather an informational guide.)

- 1. Verbatim Record.** Pursuant to Minn. R. Crim. P. 18.03 and 18.04, subd. 1, the court reporter or operator of the recording instrument must make a verbatim record of all statements, evidence taken, and events occurring before the grand jury, except jury deliberations and voting.
- 2. Production of Grand Jury Transcripts.** The record must not include any grand juror's name. The record may be disclosed only to the court or prosecutor unless the court orders disclosure of the record or designated portions of it to the defendant or defense counsel, based on the defendant's motion for good cause, or on a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. Minn. R. Crim. P. 18.04, subd. 1.
- 3. Filing Grand Jury Transcripts with the Court.**

Rule 707 of the Minnesota Rules of General Practice was amended, effective January 1, 2010, to provide rules for filing and maintaining transcripts of grand jury proceedings in the limited circumstances where transcription is permitted or ordered.

(Refer to Section III.A.2. of this Guide for transcript access and filing details.)

Under Minn. Crim. P. 18.04, subd. 2:

On the defendant's motion, and with notice to the prosecutor, the court at any time before trial must, subject to a protective order as may be granted under Rule 9.03, subd. 5, order that the defense counsel may obtain a transcript or copy of:

- (1) defendant's grand jury testimony;
- (2) the grand jury testimony of witnesses the prosecutor intends to call at the defendant's trial; or
- (3) the grand jury testimony of any witness, if defense counsel makes an offer of proof that a witness the defendant expects to call at trial will give relevant and favorable testimony for the defendant.

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E. Court Interpreter's Role and Responsibilities in Grand Jury Proceedings

1. Attend to Grand Jurors with Sensory Disabilities:

Minn. R. Crim. P. 18.03 and Minn. R. Gen. Prac. 8.12 allow qualified interpreters appointed by the court for jurors with sensory disabilities to be present during grand jury proceedings including deliberations or voting. This is in accord with Minn. Stat. § 593.32, and Rule 809 of the Jury Management Rules in the General Rules of Practice for District Courts, which prohibit exclusion from jury service for certain reasons, including sensory disabilities. The court is also required to make reasonable accommodation for such jurors under the Minnesota Human Rights Act, Minn. Stat. ch. 363A, and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

Note: For purposes of this section, a person with "sensory disabilities" means a person who is deaf or hearing disabled, and is unable to understand the proceedings without the presence of an aid to communicate.

The rules allowing an interpreter to be present during grand jury proceedings, including deliberations and voting, are limited by their terms to interpreters appointed for the benefit of jurors with sensory disabilities. Persons who are not able to communicate in English are disqualified from serving as jurors pursuant to Minn. R. Gen. Prac. 808(b)(4) (Jury Management Rules).

2. Attend to Grand Jury Witnesses:

Minn. R. Crim. P. 18.03 also allows qualified interpreters for witnesses disabled in communication to be present during grand jury proceedings, but not during deliberation and voting. Pursuant to Minn. Stat. § 611.32, subd. 1, a qualified court interpreter must be appointed for a witness disabled in communication who is called to testify at grand jury proceedings.

Note: For purposes of this section, a "person disabled in communication" means a person who, because of a hearing, speech or other communication disorder, or because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings. Minn. Stat. § 611.31.

3. Treat Grand Jury Proceedings as Confidential Information

Court interpreters are prohibited from disclosing any "matters occurring before the grand jury unless directed to do so by the court in connection with a judicial proceeding." Minn. R. Crim. P. 18.07. Any person who discloses information prematurely is subject to misdemeanor prosecution. Minn. Stat. § 628.68.

Court interpreters are also bound by Canon 5 of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System: "Interpreters shall protect the confidentiality of all privileged and other confidential information."

As noted in the Commentary to Canon 5, "Interpreters must protect and uphold the confidentiality of all privileged information obtained during the course of their duties." And, "Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding."

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VII. Grand Jury Oaths

A. To Grand Jurors as required by Minn. Stat. § 628.56. Under Minn. Stat. § 358.07(1)

“You each do swear that you will diligently inquire, and true presentment make, of all public offenses committed within this county of which you have legal proof; the counsel of the state and of yourself and fellows you will keep secret; you will present no person through malice or ill-will, nor leave any unpresented through fear or favor, or the receipt or hope of reward, but will present things truly to the best of your understanding and according to law. So help you God.”

B. To Challenged Grand Jurors, Suggested Oath

“You do swear that you will make true answers to questions put to you touching your qualifications to sit as a juror in this case. So help you God?”

C. To Officers Attending Grand Jurors, under Minn. Stat. § 358.07(4)

“You do swear that, as officer of the grand jury, you will keep their counsel and that of the state, and not disclose anything relative to their proceedings. So help you God.”

D. To Court Interpreters Attending Grand Jurors, Suggested Oath

“You do swear that you will truly and impartially interpret to this juror the oath about to be administered to the grand juror, and the testimony that shall be heard relative to the cause now under consideration. So help you God.”

Note: The interpreter should be given an oath to follow other constraints placed on jurors (e.g., not to discuss the case, etc.) and also that the interpreter will participate only in interpreting the statements of others, and will not become an additional juror.

E. To Court Interpreters Attending Grand Jury Witnesses, under Minn. Stat. § 358.07(8)

“You do swear that you will truly and impartially interpret to this witness the oath about to be administered to the witness, and the testimony the witness shall give relative to the cause now under consideration. So help you God.”

F. Affirmation in Lieu of Oaths, under Minn. Stat. § 358.08

If any person of whom an oath is required shall claim religious scruples against taking the same, the word "swear" and the words "so help you God" may be omitted from the foregoing forms, and the word "affirm" and the words "and this you do under the penalties of perjury" shall be substituted therefor, respectively, and such person shall be considered, for all purposes, as having been duly sworn.

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VIII. Payment Responsibility for Grand Jury Expenses

A. Responsibility for Payment of Certain Expenses

Grand Jury Expenses	Governing Authorities	Payment Responsibility
Grand Juror Fees - Per Diem and Mileage	<p>Minn. Stat. § 480.182(7) (providing that notwithstanding any law to the contrary, the state courts will pay for certain court-related programs and costs including jury program costs).</p> <p><i>See also Minn. Stat. § 593.48</i> (establishing that jurors shall be reimbursed for round-trip travel between their residence and the court, shall be compensated for required attendance at court sessions, may be reimbursed for additional day care expenses incurred because of jury duty at rates set by the Supreme Court, and may request parking reimbursement which shall be paid and the compensation for attendance reduced by that amount).</p>	State Courts
Grand Jury Witness Fees	<p>Minn. Stat. § 480.182(8) (providing that notwithstanding any law to the contrary, the state courts will pay for certain court-related programs and costs including witness fees and mileage fees specified in sections 357.24; 357.32).</p>	State Courts
Court Interpreters for non-English speaking Grand Jury Witnesses	<p>Minn. Stat. § 480.182(1) (providing that notwithstanding any law to the contrary, the state courts will pay for certain court-related programs and costs including court interpreter program costs, and the costs of hiring court interpreters).</p>	State Courts
Court Interpreters (or other requested auxiliary aids) for Grand Jurors and Grand Jury Witnesses with sensory disabilities. ⁶	<p>Minn. Stat. § 480.182(1) (see above) Americans with Disabilities Act (ADA) – 42 U.S.C. § 12101 et seq. - The ADA requires public entities including the courts to ensure that all individuals have an equal opportunity to participate in programs and services. For an individual who is deaf or has a hearing disability the courts are obligated to ensure that communication with that individual is as effective as communication with others. Courts must furnish appropriate auxiliary aids to allow the individual to fully participate in the programs or services. The individual’s preference for auxiliary aid should be given primary consideration when determining the type of auxiliary aid the court will provide. <i>See</i> 28 C.F.R. §§ 35.101; 35.104.</p> <p>Minnesota Human Rights Act (MHRA) - Minn. Stat. § 363A.02 also prohibits discrimination against individuals on the basis of a disability.</p>	State Courts

⁶ See Attachment D for details on how to make arrangements for reasonable accommodations for jurors.

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<p>Grand Jury Transcripts</p>	<p>Minn. R. Gen. Prac. 707(c):</p> <p>No charge may be assessed for preparation of a transcript for the district court’s own use; any other person ordering a transcript as allowed under these rules shall be at the expense of that person. Transcripts ordered by the defendant or defense counsel shall be prepaid except when the defendant is represented by the public defender or assigned counsel, or when the defendant makes a sufficient affidavit of an inability to pay and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.</p> <p>But see Minn. Stat. § 611.271:</p> <p>The court administrators of courts . . . shall furnish, upon the request of the district public defender, the state public defender, or an attorney working for a public defense corporation under section 611.216, copies of any documents in their possession at no charge to the public defender, including the following: . . . copies of existing grand jury transcripts . . . Nothing in this section shall compel production of documents that are not discoverable under the rules of court, court order, or chapter 13.</p>	<p>Person ordering a transcript</p>
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B. Payment of All Other Grand Jury Expenses

In addition to those costs addressed in the chart above, there are a number of other costs associated with grand jury proceedings. Examples of such costs include the payment of the court reporter, and providing meals and lodging for the grand jurors. While there are a number of statutes that address these costs, there is no clear legal authority establishing which entity is responsible for payment. *See, e.g.*, Minn. Stat. §§ 388.14 (providing that county board may set apart a contingent fund for defraying necessary expenses including conducting investigations by the grand jury); 628.41, subd. 5 (“The costs of a grand jury drawn from more than one county shall be apportioned between the counties from which the grand jury was drawn as may be ordered by the judge impaneling the grand jury.”); 628.41, subd. 6 (“Members of grand juries drawn from more than one county shall be compensated as provided in section 593.48. In addition, grand jurors residing more than 50 miles from the place where the grand jury sits shall be reimbursed for expenses actually incurred for meals and lodging, not to exceed \$35 per day.”); *see also* Attachment C, **District Court Practices for Hiring Court Reporters for Grand Jury Investigations (Survey of District Court Practices conducted by the Judicial Branch’s Human Resources Department in 2008.)**

Thus for all grand jury expenses other than those specifically addressed in the chart above, the issue of payment is a matter of local practice. And when payment of a particular grand jury cost is contested, responsibility for payment is an issue for the judge to decide. There are a number of cases that discuss the purpose of the grand jury, which may be helpful to the judge when deciding who should be responsible for payment of certain grand jury costs. *See, e.g.*, *State v. Penkaty*, 708 N.W.2d 185 (Minn. 2006); *State v. Pero*, 590 N.W.2d 319 (Minn. 1999); *State v. Johnson*, 441 N.W.2d 460 (Minn. 1989); *State v. Iosue*, 220 Minn. 283, 19 N.W.2d 735 (1945).

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Attachments

Attachment A – Minnesota Standardized Grand Juror Summons



Grand Jury Summons
for S004 and SS004.c



Grand Jury Using
S004 and SS004 Grar

Attachment B – Example of District Court Judge’s Instructions and Model Script When Empanelling a Grand Jury



Sample Grand Jury
Charge.doc

Attachment C – District Court Practices for Hiring Court Reporters for Grand Jury Investigations (Survey of District Court Practices conducted by the Judicial Branch’s Human Resources Department in 2008.)



Grand Jury - District
Practices for Court Rr

Attachment D – Ensuring Effective Communications with Prospective Jurors Who are Deaf or Hearing Disabled



Ensuring Effective
Communication for Pr