

# Serving on a Grand Jury . . .



The function of a grand jury is entirely different than the trial jury. It consists of 16 members and 3 alternates whose functions are conducted in secrecy. The grand jury has the responsibility to investigate charges of crimes and, if the investigation warrants, to make an accusation against an individual by returning an indictment against the person. The decision to indict is normally made solely on the basis of the state's evidence without the accused person having the opportunity to present his or her side of the case.

## Grand Jury Secrecy Requirement

By law, the work of the grand jury is conducted in secrecy. Grand jurors take an oath which, in part, requires that they keep secret the work and discussions of the grand jury. Jurors must not discuss their investigation, deliberations or votes with anyone unless specifically instructed to do so by the judge. Grand jury proceedings are conducted in secret for three reasons:

- Criminals who know a grand jury is investigating their crime might attempt to obstruct justice by intimidating witnesses or flee to avoid prosecution.
- Secrecy protects those who appear as witnesses from possible intimidation or threats.
- Secrecy protects innocent persons whose names might come before the grand jury. A great injustice can occur and irreparable injury can be done to the reputation of a person if it becomes known that they were discussed by the grand jury, but adequate evidence was not present for indictment. This type of a disclosure can cause a stigma to attach to the name and reputation of an individual which would be difficult, if not impossible, to erase.

## Grand Jury Process

Individuals selected as grand jurors are given the rare opportunity and privilege of performing a very high and important duty of good citizenship and service to the State.

Except for witnesses and court/law enforcement personnel, no other individuals are allowed to be present during the grand jury's investigation or deliberations.

A special prosecutor (appointed by the judge) acts as the legal advisor and interrogates all witnesses who appear before the grand jury. Each juror has the right to question witnesses and may request that additional witnesses be called to appear before the grand jury for interrogation. Grand jurors also have the right to request specific documents or other evidence that might be helpful to an investigation.

During proceedings, grand jurors act as investigators of possible criminal conduct and act as judges in determining whether there is adequate evidence to charge individuals with criminal conduct.

The obligation of secrecy requires that grand jurors not repeat, discuss or disclose the nature, content or result of their investigation and deliberation. They must not discuss any evidence, discussions, deliberations, opinions or statements made during the course of the grand jury proceedings with anyone during the process or at any time in the future, unless called upon to do so in a court of law. They may not disclose or testify in court as to how they or any other member of the grand jury voted on any questions presented to them, or what opinions were expressed by any juror in their deliberations or investigation.

Additionally, jurors are not allowed to disclose that an indictment has been found against a person until that person is in custody, is released under bail, or until the indictment is officially filed in the office of the clerk of the court.

It is the foreperson's job to see that proceedings are fairly conducted and that each member has a chance to question any witness, and to speak fully and freely on the issues in the case.

A grand jury is not mandated to reach a decision within a set time period, nor are they mandated to be sequestered. If jurors separate, they must abide by their oath of secrecy and not discuss the case with anyone, even with each other.

## When a Grand Jury is Called

In Nebraska, grand jury requirements and procedures are found in the Nebraska Statutes under § 29-1401. The law outlines three circumstances under which grand juries are to be called:

- **JUDICIAL INITIATIVE**  
At the request of a district judge on an annual basis, or when the district court believes it to be necessary.
- **CORONER'S CERTIFICATION**  
When a person has died while being apprehended or while in the custody of law enforcement officers or detention personnel. (In the case of an in custody death, a grand jury is required.)
- **PETITION**  
When a petition has been successfully submitted to the court.

The district courts (general jurisdiction court) of the State are the only courts with the power to call grand juries.

## In Custody Death

A grand jury must be called when an individual dies while being apprehended by law enforcement or while in the custody of detention personnel. In these cases, the purpose of a grand jury is to investigate the death to determine if formal charges should be made against any person for committing a crime in connection with the death.

Jurors consider the following:

- The cause of death.
- Whether there was any criminal conduct by any individual that caused or contributed to the death.

Grand juries may also make findings or recommendations which suggest that policies or procedures involved with the death be changed, or that new policies or procedures be instituted.

Normally all investigations and decisions to prosecute or not prosecute individuals are the duty of the county attorney. With in-custody deaths, Nebraska law (Neb. Rev. Stat. § 29-1401) requires the District Court to call a grand jury.

## Officers of the Court

Grand jurors are officers of the court and have one of the highest duties and most serious responsibilities of citizenship. The duties of grand juries are of the highest importance to the administration of justice and good government.

The power of a juror is great, and that power is to be exercised with care. It is the obligation of a grand juror to see that justice is done, while remaining mindful that the grand jury is designed not only to bring to trial those who are accused, but also to protect those who are innocent.