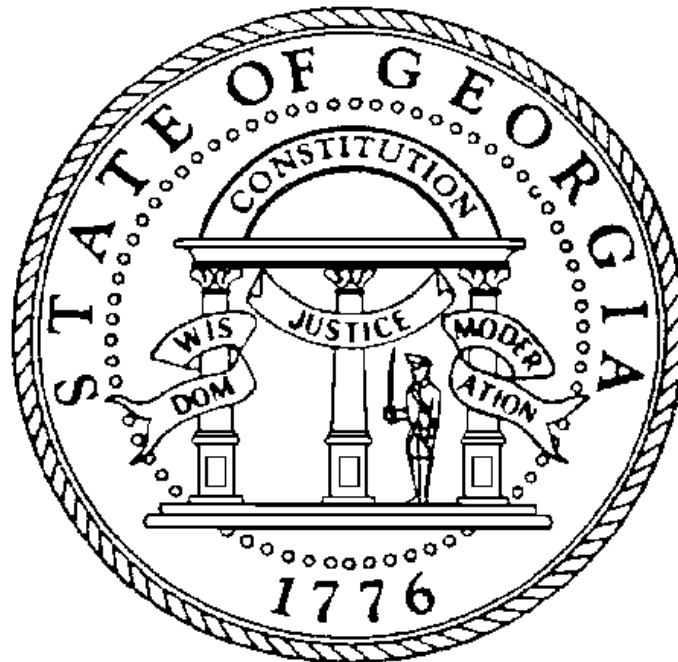


GRAND JUROR HANDBOOK



FROM
THE OFFICE OF THE
DISTRICT ATTORNEY
NORTHERN JUDICIAL CIRCUIT
D. PARKS WHITE

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PROSECUTING ATTORNEYS' COUNCIL OF GEORGIA
ATLANTA, GEORGIA 30303

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Introduction to the Annotated Edition

The text of the annotated edition of the Grand Jury Handbook is identical to the smaller, unannotated version which is normally given to grand jurors. The difference is that the annotated edition contains endnotes citations to the legal authority which supports the text so that the District Attorney can answer questions which may arise from Grand Jurors, judges, the press or members of the public. Because the grand jury is an ancient, Common Law, institution which was brought to Georgia with the first English settlers, some of the citations are to pre-Revolutionary War English cases and texts. In a few areas where the law is not settled, we have noted the different legal positions and the authority which tends to support them. Where we were aware of areas (such as critical general presentments and reports) which continue to create problems and litigation, we have noted alternatives which the District Attorney may want to consider recommending to the Grand Jury.

With the exception of the addition of footnotes, the text of the annotated edition is the same as that in the unannotated edition. The annotated edition is current through the 2015 session of the General Assembly, and the opinions of the Georgia Supreme Court, Georgia Court of Appeals and the Opinions of the Georgia Attorney General as of May 15, 2015. For additional material on Georgia Grand Jury practice and procedure, see Part A, Chapter 2 of the Trial Procedure Manual.

While this manual is specifically designed for regular Grand Juries, it may also be used with Special Purpose Grand Juries. See O.C.G.A. § 15-12-100(a).

EXPLANATION OF THE CHANGES IN THE 2015 EDITION

This edition incorporates a number of changes to Georgia law that took effect in 2013,

2014 and 2015. These include the new Evidence Code and Juvenile Code as well as amendments to the “Jury Composition Reform Act of 2011” Ga. L. 2011, p. 59, which were enacted by the General Assembly in 2014 and 2015.

Charles C. Olson
General Counsel

WELCOME TO THE GRAND JURY

You have just assumed a most important responsibility in the administration of justice in your community. Service on the Grand Jury is one way in which you, as a responsible citizen, can directly participate in government. The Grand Jury is one of the most powerful institutions of government. It has the responsibility of safeguarding individuals from unfounded prosecution while simultaneously protecting the public against crime and criminals. If your Grand Jury is to meet those responsibilities, you must be knowledgeable about your duties, responsibilities and limitations. You must serve willingly and accept your duties as a serious commitment to the community.

This handbook was prepared by the staff of the Prosecuting Attorneys' Council of Georgia and provided to you by your District Attorney to help you fulfill your duties as a Grand Juror. It summarizes the history of the Grand Jury as well as the law and procedures that govern the Grand Jury. However, it is not a comprehensive explanation of all of your duties and responsibilities and does not replace the instructions given to you by the Court nor the legal advice provided by the District Attorney. It will provide you with an overview of the duties, functions and limitations of the Grand Jury.

As you read this Handbook, it is important to remember that while the Grand Jury may appear to have considerable power and authority, the manner in which it can exercise its power and authority is strictly regulated by law and limited by the amount of time and resources which are available. Experience has taught that no single Grand Jury can do everything that the law allows them to do.

We sincerely hope you will find this opportunity to participate in the enforcement of the law a rich and rewarding experience. The Office of the District Attorney offers you its fullest cooperation and assistance as you undertake this important office. Please ask if you have any questions.

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I. GLOSSARY

Throughout your service as a Grand Juror, you will hear references to words and phrases which have particular meanings under Georgia law. Some of the more common words and phrases are defined below.

A. ACCUSATION

A formal charge made against a person, alleging that he or she has committed a crime. In Georgia, the term “Accusation” describes a legal document used in lieu of an Indictment or Special Presentment in misdemeanor cases and certain felony cases.¹ In most other jurisdictions, this document is known as an “Information.”²

B. CAPITAL FELONY

A criminal offense for which the maximum penalty authorized by law is death by lethal injection.³

C. FELONY

A crime which is punishable by death, imprisonment for life (with or without the possibility for parole), or for a term of imprisonment more than one year.⁴

D. GENERAL PRESENTMENT

A written report by the Grand Jury which is submitted to the Superior Court, generally issued at the end of the Term of Court, in which the Grand Jury summarizes its activities and makes findings and recommendations which it is authorized by law to make in conjunction with its non-criminal duties.⁵

E. INDICTMENT

The formal document returned by the Grand Jury charging one or more persons with having committed a crime or crimes specified therein. Prior to its having been considered by the Grand Jury, a proposed indictment may be referred to as a “bill of indictment.”⁶

F. JUVENILE COURT

A trial court created by the Georgia Constitution that has jurisdiction over children who are under the age of 17, who are alleged to have committed a crime.⁷ The Juvenile Court also hears cases in which a child, under the age of 18, has been abused or neglected, is without a parent, guardian, or legal custodian, or has engaged in conduct, such as habitually skipping school, running away from home or using alcohol, which can only be committed by a child.⁸

G. MALICIOUS PROSECUTION

A criminal prosecution initiated by a person for malice or spite when probable cause does not exist to believe that the defendant committed the offense charged.⁹

H. MAGISTRATE

A judge of a trial court who is authorized to issue arrest and search warrants, and who has jurisdiction to conduct commitment hearings and try certain misdemeanor and ordinance violations and civil cases.¹⁰ In Georgia, Judges of the Magistrates Courts, County Recorders Courts and Municipal Courts are commonly referred to as Magistrates.¹¹

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I. MISDEMEANOR

A crime, other than a felony, that is punishable by imprisonment for 12 months or less, or a fine, or both.¹²

J. “NO BILL”

A finding made by the Grand Jury on a Bill of Indictment or Special Presentment after hearing the evidence, that the charges against the accused are groundless or the evidence is insufficient to present an issue for trial.¹³

K. PROSECUTOR

In Georgia, this is not the prosecuting attorney, but is a legal term used to describe a person who “instigates a prosecution by making an affidavit charging a named person with the commission of a penal offense, on which a warrant is issued or an indictment or accusation is based.”¹⁴

L. PERSON

By law, person can mean an individual, a corporation, an association or a partnership.¹⁵

M. PROBABLE CAUSE

The term used to describe a finding by the Grand Jury indicating that the facts would justify a person of reasonable caution to believe that an offense has been or is being committed and that a named individual, or corporation, committed the offense. Probable cause does not involve a certainty, but requires merely a probability, something more than a mere suspicion or possibility.¹⁶

N. SPECIAL PRESENTMENT

A Special Presentment is substantially the same as an Indictment in that it is a document that charges the person named therein with having committed the crime or crimes described in the document. While at one time there were significant differences between an Indictment and a Special Presentment, in modern practice, the only difference is that in a Special Presentment, no person is named as the “prosecutor” because, in theory, the offense charged is based on the Grand Jury’s own knowledge or observation of a crime having been committed instead of information derived from an arrest warrant.¹⁷

O. SPECIAL PURPOSE GRAND JURY

A Special Purpose Grand Jury is a grand jury that may be empanelled only in counties with a population of 70,000 or more according to the latest United States decennial census.¹⁸ The Superior Court may order summoning of a Special Purpose Grand Jury only upon petition of an elected public official of the county or of a municipality lying wholly or partially within the county.¹⁹ A Special Purpose Grand Jury is not tied to a particular term of court²⁰ but cannot return indictments.²¹ Otherwise, it is subject to the same rules and restrictions as a regular grand jury.²²

P. STATE COURT

A court established by statute that has concurrent jurisdiction with the Superior Court over misdemeanors and certain types of civil cases in a particular county.²³

Q. STATUTE OF LIMITATIONS

A time limit fixed by statute, within which a criminal prosecution must be initiated by the filing of an Indictment, Special Presentment or Accusation. For a few offenses such as murder,²⁴ some crimes offenses in

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which the victim is less than 16 years of age²⁵ and certain offenses involving uses of DNA evidence to establish identity of the accused there is no statute of limitation.²⁶ For most felony offenses, the statute of limitations is four years from the date when the crime occurred or is discovered,²⁷ but the legislature has set longer statutes of limitation for crimes for which the death penalty may be imposed²⁸ and crimes such as forcible rape,²⁹ racketeering³⁰ and felonies committed against victims who are under 18 years of age.³¹ The statute of limitations for misdemeanor is 2 years.³² There are some circumstances that postpone the running of the statute of limitation, such as when: (1) the accused is not usually and publicly a resident within the state; or (2) the person committing the crime is unknown or the crime is unknown.³³

R. SUPERIOR COURT

A court of general trial jurisdiction established by the Constitution of Georgia that has exclusive jurisdiction over felony cases and civil cases involving divorce, equity, and title to land, and has concurrent jurisdiction over other civil and criminal cases.³⁴

S. TERM OF COURT

This phrase is used to describe the period of time, usually expressed in months, during which a Court must sit at least once within a county and conduct jury trials. It also establishes the term of service during which the Grand Jury will sit.³⁵ In Georgia, the Terms of Court are set by statute and vary from county to county, ranging from 2 months to 6 months.³⁶

T. “TRUE BILL”

The endorsement made by a Grand Jury on an Indictment or Special Presentment when they find there is probable cause to believe that the accused committed the alleged act.³⁷

U. “VENIRE”

A Latin term used to collectively describe those individuals who have been summoned and appear for jury duty but have not yet been selected to serve on a particular grand or trial jury.³⁸

V “VOIR DIRE”

The term is from a formal form of French known as “Law French” that was used in England after 1066. It means “to speak the truth.” The term is used to describe the questioning, under oath or affirmation, of individuals who have been summoned for duty as a juror concerning their qualifications and, in the case of trial juries, their knowledge of the facts of the case and any biases they may have toward the parties.³⁹

II. HISTORY

Service on a Grand Jury will provide you with a unique opportunity to participate in the administration of justice. In order to better appreciate the functions of the Grand Jury today, it is necessary to understand a little about its history and evolution.

While there may have been a similar body in Athens, Greece, before the First Century A.D. and in Tenth Century Scandinavia, the direct ancestor of the modern Grand Jury is generally accepted to date from the 1166 A.D. decree of King Henry II of England.⁴⁰ This decree required twelve knights or other freemen of every hundred,⁴¹ and four men of every township, to submit accusations of murder, robbery, larceny, and harboring of criminals. Under the Norman and Plantagenet Kings, Judges were required to ride a circuit to hold court in the outlying counties. Because the majority of criminal cases were brought by private citizens, many cases were found to be completely

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baseless. The panel of knights and freemen called for in Henry II's decree provided a ready screening device to weed out baseless cases before they went to trial. This panel became known as the great, or in Norman French, the "Grand" Jury (the trial jury, by contrast, is the small or ordinary, "Petit" Jury). Because they were also charged by the King with discovering what crimes had been committed in the County since the previous Term of Court, they were also called the "Grand Inquest."

While during the Thirteenth and Fourteenth Centuries, the members of the Grand Jury formed the whole or part of the Petit Jury, eventually, a total separation of the Grand and Petit Juries evolved. By this time the primary function of the Grand Jury emerged: that is, to look at the Prosecutor's evidence and determine if there was probable cause for indictment. In addition to acting as a screening device, the Grand Jury also provided citizens a degree of local control over criminal prosecutions. Few criminal cases could be presented to the courts unless at least 12 of the Grand Jurors in the locality where the crime had occurred concurred in a True Bill.⁴² This procedural safeguard, guaranteed to all Englishmen by the Magna Carta,⁴³ provided protection against attempts by the King and nobles to persecute citizens through the use of unwarranted criminal charges.

When English colonists began settling in North America, they continued to follow the English legal system, which included the Grand Jury. It was during this period that Grand Juries acquired many administrative duties outside the criminal law.⁴⁴ In Georgia, the Grand Jury is older than the Superior Courts, the first Grand Jury having been convened in 1735 in Savannah during the Trustee period.⁴⁵ Prior to the American Revolution, Grand Juries in Georgia and the other colonies played a significant role in opposing British policies.⁴⁶

After the Revolutionary War, the Grand Jury continued to be a part of the judicial systems in the thirteen original states. While no mention was made of the Grand Jury in the Constitution of the United States when it was proposed for ratification in 1787, provisions for the Grand Jury were taken up by Congress when it met for the first time in 1789. In the Fifth Amendment to the Constitution of the United States, it was provided that:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

In Georgia, Grand Juries played an important role in the development of the State.⁴⁷ The routes for many of our early roads were suggested by Grand Juries in their General Presentments and Grand Juries were among the first public bodies to alert the citizens of Georgia to the infamous Yazoo Land Fraud, in which a large portion of Georgia's western lands (now the States of Alabama and Mississippi) were sold to speculators who had bribed members of the Georgia legislature.⁴⁸ Grand Juries also were instrumental in the calling of the Constitutional Convention of 1877.⁴⁹

Beginning in the late 1800's, questions about the Grand Jury began to appear. Critics characterized Grand Juries as "an expensive and cumbersome relic that had outlived its usefulness" and by the early part of the Twentieth century many of the Western States had abolished or limited the use of the Grand Jury.⁵⁰

In Georgia, concern that some Grand Juries were abusing their authority to review local government led the legislature in 1869 to provide that "the duties of a [G]rand [J]ury shall be confined to such matters and things as by law it is required to perform."⁵¹ In addition, Courts began to impose limits on the contents of Grand Jury Presentments, holding that a Grand Jury could not accuse someone of misconduct except by Indictment or Special Presentment.⁵²

In 1974, the General Assembly authorized the Superior Courts in designated urban counties to impanel Special Purpose Grand Juries if requested to do so by an elected public official.⁵³ In 1982, the number of counties authorized Special Purpose Grand Juries was expanded so that the law now applies to any county with a population of 70,000 or more according to the most recent census.⁵⁴ Special Purpose Grand Juries are similar to regular Grand Juries in terms of the procedures that must be followed for the selection of Grand Jurors.⁵⁵ However, Special Purpose Grand Juries may not return an Indictment of Special Presentment⁵⁶ and are not limited in their service to a

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single term of Court but may sit until the Judge assigned to supervise the Grand Jury decides the Grand Jury has completed its investigation.⁵⁷

The role of the Grand Jury continues to evolve to meet the demands of society. While duties such as inspecting and recommending roads⁵⁸ have passed into history, new duties have taken their place. These will be discussed in greater detail in the sections that follow.

While the Grand Jury remains a powerful institution through which ordinary citizens can participate directly in local government, its powers are not unlimited. Within the limits established by law, the Grand Jury is capable of providing a wealth of benefits to all citizens of your community.

III. SELECTION AND ADMINISTRATION

Many people who receive a notice or summons informing them that they have been selected to serve on the Grand Jury wonder, “How did I get selected for this?” To understand how you came to be selected, we first must examine who is qualified for service on the Grand Jury and then how Grand Jurors are selected.

A. QUALIFICATIONS

Any citizen of Georgia may serve on a Grand Jury if he or she:

1. Is a citizen of the United States;⁵⁹
2. Is 18 years of age or older; and
3. Is a current resident of the county and has resided in the county for at least 6 months prior to serving.⁶⁰

Except as indicated below, any citizen who meets these basic requirements is eligible to be summoned to serve as a Grand Juror. If you are 70 years of age or older, you may request, in writing, that the Clerk of Court to be excused from jury service.⁶¹ Also if you are “engaged in work necessary to the public health, safety, or good order” or can show a valid reason you cannot serve on the grand jury, the judge may excuse or defer your service to another Term of Court. These include:

1. Active duty military personnel;⁶²
2. Primary caregivers who provides active care and custody of a child six years of age or younger⁶³ or someone who is physically handicapped;⁶⁴
3. Full-time students at a college, university, vocational school, or other postsecondary school;⁶⁵
4. Primary teachers in a home study program.⁶⁶

However, there are some situations that absolutely disqualify you from serving on the grand jury. These include:

1. You are not a citizen of the United States;⁶⁷
2. You currently hold, or within the previous two years have held, any elective office in State or local government;⁶⁸
3. You were summoned, and reported, for duty as a Grand Juror or as a Trial Juror in any Superior, State or Probate Court or for a coroner’s inquest, in the previous 12 months.⁶⁹

NOTE: If you have served as juror within the last 12 months, it is important that you make the judge or the district attorney aware of this fact; in some cases, it may be legal for you to serve as a juror more than once a year.

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4. You have moved out of the county (either before or after being selected as a grand juror).⁷⁰

An individual is also not eligible to serve on the grand jury if:

1. You have been convicted of a felony in either a state or Federal Court but you have not had all of your civil rights restored.⁷¹

[NOTE: Georgia and many other states automatically restore the right to vote to individuals who have been convicted of a felony when they complete all the terms of their sentence.⁷² However, this does not restore all civil rights or make the individual eligible to serve on a grand jury. If you were convicted of a felony in a Georgia court, before you can serve on a grand jury you must apply to the Board of Pardons and Paroles for either restoration of civil rights or a pardon and the Board must grant your request],⁷³

2. You have been determined to be mentally incompetent by a court of law;⁷⁴
3. You currently are the defendant in a criminal case in which you are charged with a felony and you are participating in a pretrial release program, a pretrial release and diversion program, or a pretrial intervention and diversion program but have not completed the program.⁷⁵
4. You have plead guilty to or have been convicted of having committed a felony drug offense but were sentenced pursuant to Code Section 16-13-2 but have not completed the terms of the sentence.⁷⁶
5. You are currently serving a sentence (including probation) as a first offender for having committed a felony but have not completed the terms of the sentence;⁷⁷ or
6. You are currently participating in a drug court division, mental health court division, veterans court division, a similar court program from another state, or a similar federal court program after having been charged with a felony offense.⁷⁸

If you are disqualified from serving on the grand jury, but do not disclose it before you take the oath as a grand juror, the consequences can be severe. First, prior to being actually placed on the Grand Jury, the presiding judge and the District Attorney will question you, under oath, to make sure that you are legally qualified to serve as a Grand Juror.⁷⁹ If you do not answer questions truthfully you can be charged with the crime of perjury and, if convicted, sentenced to prison for 1 to 10 years, fined up to \$1,000.00, or both.⁸⁰ Second, any action taken by the grand jury while you are serving can be invalidated, resulting in all those cases having to be presented again to the grand jury.⁸¹ Third, you may be held in contempt of court and jailed or fined.⁸²

If you have any questions about your eligibility to serve, you should ask the District Attorney, the Judge, Clerk of Court or the Jury Manager as soon as you receive the summons.

B. SELECTION

All jurors (both trial jurors and Grand Jurors) are selected from a statewide master jury list identifying a pool of all citizens eligible for jury service within the State of Georgia. The Council of Superior Court Clerks creates the statewide master jury list from drivers' license information provided by the Georgia Department of Driver Services and from voter registration information obtained from the Secretary of State's Election Division.⁸³ From the statewide list, the Council creates county master jury lists for each county in Georgia. The Council is responsible for distributing a county master jury list, in electronic format, to each respective county's Board of Jury Commissioners or Jury Clerk once per calendar year.⁸⁴ The Council is also charged with maintaining and updating all information relative to jurors on such lists.⁸⁵

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In each county in Georgia, the Clerk of Court chooses a random list of names from the county master jury list, which will comprise the venire.⁸⁶ This procedure ensures that potential jurors are chosen from the county master jury list in a manner that does not deliberately or systematically exclude identifiable and distinct groups from the venire.⁸⁷ After choosing a sufficient number of people (typically 18 to 75 names) to serve as Grand Jurors, the Court Clerk is responsible for notifying the prospective Grand Jurors when and where to report. This can be done by issuing a notice or summons by mail at least 20 days before the beginning of each Term of Court at which a Regular Grand Jury is impaneled.⁸⁸ The Court Clerk is authorized to mail all summonses by first-class mail addressed to the prospective jurors' most notorious places of abode at least 25 days before the court date which they are required to attend.⁸⁹

In some counties, prospective grand jurors may be sent a written questionnaires concerning their qualifications to be a juror. This questionnaire must be completed and returned to the Clerk or the Jury Commission.⁹⁰ Any questions you answer in your questionnaires and any personal information you disclose cannot be disclosed to the general public.⁹¹ It is the duty of the Judge to reasonably protect your privacy during the voir dire process. Failure to appear for Grand Jury service, when duly summoned, may be punished as contempt of Court.⁹²

While the summons usually will designate whether you are being called to serve on the Grand Jury or on a trial jury, it is possible for you to be switched from trial jury duty to the Grand Jury if there are not enough qualified prospective Grand Jurors.⁹³

C. ORGANIZING AND IMPANELING THE GRAND JURY

1. *Qualifying the Panel and Excusing Individuals From Service.*

At the time and date specified in the summons (usually the first day of the Term), those summoned for service on the Grand Jury assemble at the county courthouse (or other location indicated in the summons). After reporting to the courtroom, the prospective Grand Jurors will be administered the following oath by the presiding Judge or the District Attorney:

“You shall give true answers to all questions as may be asked by the court or the district attorney concerning your qualifications to serve as a grand juror.”⁹⁴

The presiding Judge and the District Attorney will then ask the assembled jurors questions designed to insure that everyone is qualified to serve as a Grand Juror. This process is known as “voir dire.” **It is critical that you answer these questions fully and truthfully and let the Judge and the District Attorney know if there is any reason to believe you may not be qualified. If you have any doubts or questions about your being legally qualified, you should bring those doubts or questions to the attention of the Judge or the District Attorney. If someone who is not legally qualified to serve on the Grand Jury is impaneled and serves, any Indictments or Presentments which are True Billed by the Grand Jury during the Term can be challenged and will have to be represented to another Grand Jury.**⁹⁵

The reasons which would disqualify someone from serving on the Grand Jury are on page 8 of this Handbook. Moving out of the county is the most common reason why individuals cannot serve on the Grand Jury. If, at any time after you are selected, you move out of the county or there is a change in your personal situation that may affect your qualifications to serve, you must tell the District Attorney or the Foreperson.

On pages 11 and 12 of this Handbook, we will discuss those instances when a Grand Juror may be disqualified in a particular case or cases. (**Note:** A Grand Juror who is disqualified in a one particular case can still hear other cases.)

During voir dire, the Judge, a person designated by the Judge or the District Attorney usually will ask those have been summoned for service on the grand jury if there is anyone who may be unable to serve as a Grand Juror

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for that Term because he or she will “be engaged . . . in work necessary to the public health, safety or good order,” or for other good cause.⁹⁶ Good cause can include being:

1. A full-time student at a college or technical school;⁹⁷
2. The “primary caregiver . . . of a child six years of age or younger;”⁹⁸
3. The “primary teacher in a home study program;”⁹⁹
4. The “primary unpaid caregiver” for a person over the age of six with serious physical or cognitive limitations;¹⁰⁰
5. A member, or the spouse of a member, of the armed forces (including the National Guard and Reserves) who is deployed “at least 50 miles from his or her home;”¹⁰¹ or
6. Permanently mentally or physically disabled to the extent that they cannot perform the essential functions of a juror, even with reasonable accommodations.¹⁰²

In these situations, the Judge (or a person designated by the Judge), has the discretion on an individual basis to defer such person’s jury service to another time.¹⁰³ By law, no one can be excused totally from jury service unless he or she is permanently mentally or physically disabled to the extent that they cannot perform the essential functions of a juror, even with reasonable accommodations.¹⁰⁴

After excusing those individuals who are disqualified or are being excused from serving, the presiding Judge will select 16 to 23 individuals who were summoned to serve as members of the Grand Jury and up to 3 alternate Grand Jurors.¹⁰⁵ The alternates may be called on to serve if a member of the Grand Jury is disqualified or is absent for any reason. They also may serve on any inspection or examination committee, in which case they have the same authority as other members of the Grand Jury.¹⁰⁶ However, an alternate should not be present with the Grand Jury when criminal cases are being considered unless one of the members is disqualified or absent.¹⁰⁷

After the Court has selected the 16 to 23 persons and up to 3 alternates to serve on the Grand Jury, the remaining prospective jurors usually will be excused.

Normally, only one Grand Jury will be impaneled each term of Court.¹⁰⁸ However, the law allows the Court to impanel additional Grand Juries if the public interest requires it.¹⁰⁹

2. *Length of Service as Grand Jurors.*

If you are selected to serve as a Grand Juror or as alternates, you will normally serve for the full Term of Court unless you are discharged from further service by the presiding Judge.¹¹⁰ Because the length of a Term of Court varies from county to county, the Judge, or the District Attorney, will usually advise you how long you are expected to serve. This does not mean that you will be in constant session throughout the Term, but you may be called in from time to time as necessary. The District Attorney will discuss the schedule for Grand Jury meetings with you during your first session.

3. *Selection of Foreperson and Administration of the Oath.*

The Foreperson serves as the presiding officer of the Grand Jury and performs other ministerial functions described on p. 13).¹¹¹ Georgia law provides that the presiding Judge will either appoint the Foreperson or direct that the Grand Jurors elect one of their members as Foreperson

The Foreperson and other Grand Jurors will then be administered the oath of office.¹¹²

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“You, as foreperson [or member] of the Grand Jury for the County of _____, shall diligently inquire and true presentment make of all such matters and things as shall be given you in the Court’s charge or shall come to your knowledge touching the present service; and you shall keep the deliberations of the Grand Jury secret unless called upon to give evidence thereof in some Court of law in this State. You shall present no one from envy, hatred, or malice, nor shall you leave anyone unrepresented from fear, favor, affection, reward, or the hope thereof, but you shall present all things truly and as they come to your knowledge. So help you God.”

This oath, which is over 300 years old,¹¹³ indicates, in a general sense, both the duties and limitations of the Grand Jury. In taking the oath, each Grand Juror should understand the tremendous responsibility to the community which they assume upon being sworn into office. You pledge yourself to act on behalf of all of the citizens of your county without “envy, hatred, . . . malice, . . . fear, favor, affection, reward [or] hope [of reward].”¹¹⁴ By taking this oath, you become, for the Term of Superior Court, a public officer.¹¹⁵ And while you have immunity from civil suit for your official acts,¹¹⁶ violation of your oath or misconduct as a Grand Juror can subject you to contempt of Court or criminal prosecution with penalties of imprisonment for up to 5 years, fines up to \$1,000, or both.¹¹⁷ The District Attorney can provide you with additional information about this.

After the Grand Jury has been sworn, the following oath is administered to the bailiff, whose job it is to attend to the Grand Jury:¹¹⁸

“You do solemnly swear that you will diligently attend the Grand Jury during the present term and carefully deliver to that body all such bills of indictment or other things as shall be sent to them by the court without alteration, and as carefully return all such as shall be sent by that body to the court. So help you God.”

4. *The Court’s Charge to the Grand Jury.*

After you have been administered your oath of office and the bailiff has been sworn, the Superior Court Judge will “Charge” the Grand Jury.¹¹⁹ In the Charge, the Judge will explain your duties, powers and responsibilities as Grand Jurors in both criminal and civil matters (see pages 14 and 17 for more information on these). The Judge may also direct the Grand Jury to investigate other matters of public interest.¹²⁰ Following the Judge’s Charge, the Grand Jurors will usually retire to the Grand Jury room to begin their duties.

D. GRAND JURY ORGANIZATION AND OPERATIONS

The first task facing any new Grand Jury is to organize their own internal structure for the Term and to identify the other individuals who will interact with them throughout the Term.

1. *Foreperson*

The Foreperson¹²¹ is the presiding officer of the Grand Jury and signs all Indictments and Presentments.¹²² As indicated on page 12, the Superior Court Judge may appoint the Foreperson, or will allow the Grand Jury to elect its Foreperson. The Foreperson may administer the oath to and question witnesses.¹²³

2. *Other Officers*

In many counties, the Court may appoint, or the Grand Jury may elect, an *Assistant* or *Deputy Foreperson* to preside at Grand Jury meetings if the Foreperson will be absent for any reason.¹²⁴ Other officers commonly found in the Grand Jury are a *Clerk* and a *Doorkeeper*.¹²⁵

The *Clerk* is usually charged with keeping the records of the Grand Jury such as attendance and a record of matters considered by the Grand Jury.¹²⁶ The *Clerk* should also check each Indictment or Special Presentment after the Grand Jury has voted and verify that the action taken is properly recorded on the backing and has been signed by

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the Foreperson. The *Doorkeeper's* job is to guard the door and notify the bailiff when the Grand Jury requires anything.

3. *Bailiff*

The *bailiff* is an officer of the Court, appointed by the Sheriff and assigned to attend the Grand Jury.¹²⁷ The *bailiff* assigned to the grand jury is charged with insuring that unauthorized persons do not enter the Grand Jury room when the Grand Jury is in session. When properly sworn, as discussed on page 10, the *bailiff* is authorized to deliver documents from the Court to the Grand Jury and to make the return of Indictments and Special Presentments which have been either True Billed or No Billed to the Court so that they can be docketed.¹²⁸

4. *The Grand Jury's Legal Advisor -- the District Attorney*

By law, the District Attorney is the legal advisor for the Grand Jury.¹²⁹ In so providing, the legislature recognized that most citizens who serve on the Grand Jury are unfamiliar with the many technicalities of the law. The District Attorney is responsible for advising you on any questions of law or procedure which you may have as a Grand Jury. In 1973 the Georgia Supreme Court held that the Grand Jury must rely on the District Attorney for legal advice and may not employ any other lawyer for that purpose.¹³⁰ Assisting the District Attorney in carrying out these duties will be Assistant District Attorneys.¹³¹

In addition to serving as legal advisor to the Grand Jury, the District Attorney and his or her staff are counsel for the State in all criminal cases which will be brought before you. The District Attorney's office will prepare the cases for presentation to the Grand Jury and subpoena necessary witnesses and evidence.¹³² The District Attorney and Assistant District Attorneys are authorized to be present with the Grand Jury when cases are being presented. They may also administer the oath to and question witnesses before the Grand Jury.¹³³ Any indictments, general or special Presentments or subpoenas which the Grand Jury requests to be drawn will be prepared by the District Attorney's office.¹³⁴

5. *Other Persons Authorized to Assist the Grand Jury*

Interpreters: If a witness who will testify before the Grand Jury either does not speak or understand English or is hearing impaired, the Court will appoint an *interpreter* to interpret the proceedings and the witness' testimony.¹³⁵

Stenographer/Court Reporter: In some counties the District Attorney may provide a *stenographer* to record and transcribe the testimony of witnesses before the Grand Jury.¹³⁶ This person may be court reporter or an employee of the District Attorney's office.

Foreperson of Prior Grand Jury: When requested by the Grand Jury, the Foreperson of the previous Grand Jury may review and report on actions taken by that Grand Jury. In such a case, the former Foreperson is entitled to the same compensation as members of the present Grand Jury.¹³⁷

Grand Jury Committees: When carrying out its civil functions, the Grand Jury may form committees to conduct inspections or investigations.¹³⁸ They may also appoint a citizen of the county to provide technical expertise to either the Grand Jury or the committee.¹³⁹ This will be discussed in greater detail on page 15.

6. *Meetings and Quorum.*

As indicated on page 7, meetings of the Grand Jury are scheduled based on the requirements of your Court. However, in order for the Grand Jury to hear evidence or take any official action, at least 16 qualified members must be present in the Grand Jury room.¹⁴⁰

7. *Disqualification of Grand Jurors in Particular Cases.*

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On pages 7-8, we mentioned that certain individuals cannot serve on the Grand Jury. There are also circumstances when a Grand Juror may be disqualified from serving on a particular case or cases because of his or her relationship to either the victim or the accused.¹⁴¹ For obvious reasons, a Grand Juror who was either the victim or a defendant in a crime being considered by the Grand Jury is disqualified.¹⁴²

A Grand Juror who is related by blood or marriage within the third degree to a person under investigation by the Grand Jury or any party interested in the results of the case is also disqualified from hearing that particular case.¹⁴³ The chart below shows those who are related within the sixth degree, by blood or marriage. “X” represents the Grand Juror.

IV. If, at any point during your Term, you have any concern that you or any other member of the Grand Jury may be disqualified in a particular case, please speak to the District Attorney or an Assistant District Attorney. If a Grand Juror deliberates or votes in a case in which they are disqualified, the Court may be forced to dismiss any resulting Indictment or Special Presentment.

V.

FIRST DEGREE	Parents and children of X
SECOND DEGREE	Grandparents, brothers and sisters of X, and grandchildren of X
THIRD DEGREE	Uncles, aunts, nephews, nieces, great-grandparents of X, and great-grandchildren of X
FOURTH DEGREE	First cousins, great-uncles, great-aunts, great-great-grandparents, great-nephews and nieces of X, and great-great-grandchildren of X
FIFTH DEGREE	Great-great-uncles and aunts, the children of a first cousin, the children of great-uncles or aunts, great-great-great-grandparents, great-great nephews and nieces of X, and great-great-great-grandchildren of X
SIXTH DEGREE	Great-great-great-uncles and aunts, second cousins, first cousins twice removed (being the children of the children of a first cousin), children of great-great-great-great-grandparents, and great-great-great-nephews and nieces of X

VI.

1. *Compensation*

The amount and manner in which you will be compensated for your service on the Grand Jury varies from county to county. As indicated on pages 19 and 20, the Grand Jury impaneled at the Fall Term of Court has the duty to recommend the amount which jurors and bailiffs are paid.¹⁴⁴

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B. SECRECY OF GRAND JURY PROCEEDINGS

The oath you take as a Grand Juror requires that you “*shall keep the deliberations of the grand jury secret unless called upon to give evidence thereof in some court of law of this state.*”¹⁴⁵ There are important reasons why you are commanded not to disclose to anyone what occurs while the Grand Jury is in session: secrecy protects witnesses from intimidation or tampering, and makes it more difficult for a witness to avoid subpoena, hide or destroy evidence or for a defendant to evade arrest.¹⁴⁶ Secrecy not only aids in the investigation process, but is of particular importance to an accused that may later be cleared by a return of a No Bill.¹⁴⁷

To ensure secrecy, only the Grand Jurors, the District Attorney and his or her Assistant District Attorneys, a stenographer or interpreter when authorized, and the witness who is testifying may be present in the Grand Jury Room while evidence is being presented. While the Grand Jurors are deliberating and voting on a case, absolutely no one except the Grand Jurors may be present.¹⁴⁸

By law in Georgia, communications among Grand Jurors are excluded from evidence as a matter of public policy.¹⁴⁹ However, you may disclose anything that occurred during your Term if you are ordered to do so by a Judge of a Court of record in this State.¹⁵⁰

VII. CRIMINAL OR ACCUSATORY FUNCTION

Because Georgia law requires that the Grand Jury must find a True Bill in most felony cases before most felony cases may be brought to trial, a substantial amount of your time will be spent inquiring into the existence of possible criminal conduct.¹⁵¹ It should be noted that not every criminal case requires action by the Grand Jury. Indictment by the Grand Jury is not required for misdemeanors¹⁵² and certain felony offenses.¹⁵³ In all but capital felonies, the defendant may waive Indictment by the Grand Jury. In these cases, the prosecuting attorney may file an Accusation, or in some instances a citation, directly with the Court.¹⁵⁴ In addition, Indictments are not used in cases when the accused is under 17 years of age and the case is brought in Juvenile Court.¹⁵⁵

A. HOW CASES GET TO THE GRAND JURY

Most cases that will be brought before you begin with a crime being reported to, or discovered by, a law enforcement agency, such as the Sheriff’s department, police department, or a State law enforcement agency. Following an investigation, a law enforcement officer will obtain a warrant for the arrest of the person believed to have committed the crime.

In other cases, a private individual will have obtained an arrest warrant from a magistrate accusing a person of a crime.¹⁵⁶ In these cases, there often will be little or no investigation of the charges by law enforcement.

After the accused is arrested, he or she will be brought before a magistrate, who will decide if the accused should be released on bail or held in custody. At that time, the accused may ask for a commitment hearing or allow the case to be bound over to Superior Court. If a commitment hearing is held, a magistrate will consider the facts in the case and determine if there is sufficient reason to believe that the accused committed the crime charged. If the magistrate determines that there is sufficient reason to believe the accused committed the crime, the case will be bound over to the Grand Jury.¹⁵⁷ After receiving and reviewing the warrants, police reports and interviewing key witnesses, the District Attorney’s office will prepare an Indictment or Special Presentment for presentation to you.¹⁵⁸

In addition to cases that are bound over, the District Attorney’s office can bring an Indictment or Special Presentment before you for investigation where the accused has not been arrested. Finally, if you or another member

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of the Grand Jury have personal knowledge that a crime has been committed for which the statute of limitations has not expired, the Grand Jury may request that the District Attorney prepare an Indictment or Special Presentment so that the case may be considered by the Grand Jury.¹⁵⁹

It is the duty of the Grand Jury in criminal cases to determine from the evidence presented if there is probable cause to believe that a crime has been committed and to determine whether the person or persons named in the Indictment or Special Presentment committed it.¹⁶⁰

B. PROCEDURE IN CRIMINAL CASES

1. *Preparation of the Case for Presentation to the Grand Jury.*

Prior to each meeting of the Grand Jury, the District Attorney's office will prepare an Indictment or Special Presentment for each case that will be presented. In most cases, this is done from the arrest warrant and any reports prepared by the investigating officers and the crime laboratory. In addition, the District Attorney's office will cause subpoenas to be issued by the Clerk for any witnesses or physical evidence which will be needed in order to establish that probable cause exists.¹⁶¹

2. *Presentation of the Case.*

When the Grand Jury meets, the District Attorney or an Assistant District Attorney designated by the District Attorney will either read or explain the proposed Indictment [sometimes referred to as a "Bill of Indictment"] to the Grand Jury and will acquaint them with the witnesses who will testify. This is done to allow the Grand Jurors to familiarize themselves with the parties involved in case one or more members become disqualified to serve (see p. 8-9).

After explaining the Indictment, the District Attorney will begin calling the witnesses. These witnesses may appear voluntarily, at the request of the Grand Jury or the District Attorney, or they may be ordered to appear by being served with a subpoena.¹⁶² All witnesses who appear before the Grand Jury in a criminal case must be administered the following oath by the District Attorney, an Assistant District Attorney, or the Foreperson:

*"Do you solemnly swear or affirm that the evidence you shall give the grand jury on this bill of indictment or presentment shall be the truth, the whole truth, and nothing but the truth. So help you God."*¹⁶³

If a witness fails to take the required oath, his or her testimony would not be evidence and any Indictment or Presentment returned on this testimony would be invalid.¹⁶⁴ In addition, if the oath administered to the witness is not substantially the same as the statutory oath and if the testimony given should prove to be false, the witness cannot be prosecuted for perjury.¹⁶⁵

The witness will normally be questioned first by the District Attorney or an Assistant District Attorney, then by the Foreperson, and finally, if desired, by any other members of the Grand Jury. If you have a question that you would like to ask a witness but are in doubt whether or not it is a proper question, the advice of the prosecuting attorney presenting the case should be sought. The prosecuting attorney may also advise the Grand Jury about what evidence you may consider in your deliberations.

In most cases, the only witnesses who will be scheduled to appear before the Grand Jury will be the law enforcement officers who have investigated the cases. These officers may testify as to statements made to law enforcement officers by the suspects or by witnesses to the crime and to the results of any laboratory tests performed on physical evidence in the case. Even though such testimony is considered to be hearsay (an unsworn, out-of-court statement) it can be sufficient evidence on which the return of an Indictment can be based.¹⁶⁶ It is important to remember that at least one witness must be sworn and give testimony as to each Indictment or Special Presentment in order for the Indictment or Special Presentment to be valid.¹⁶⁷

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As the case is being presented, each Grand Juror should be attentive to the testimony and evidence being offered. If it should appear that there is a difference between the testimony and the facts alleged in the Indictment, this should be called to the attention of the District Attorney or the Assistant District Attorney handling the case. (Example: the Indictment alleges that John Smith was robbed, but the testimony is that Jane Smith was the victim.)

3. *Deliberations.*

After the evidence is presented, the *prosecuting attorney will leave the room*¹⁶⁸ and the Grand Jury will be given the opportunity to discuss the case in private and to vote whether the Bill of Indictment should be returned as a “True Bill” or a “No Bill”. No one other than the qualified members of the Grand Jury may be present during the deliberation and voting.¹⁶⁹ The Grand Jury may also defer taking action on the case by tabling it, holding the case for further investigation,¹⁷⁰ or by requesting that additional or different charges be presented to them.¹⁷¹

In considering an Indictment, it is important that you remember that the function of the Grand Jury is not to try the merits of the case, but rather to determine if probable cause exists. It would be difficult, if not impossible, to determine a case on its merits, as the defendant does not have the right to appear before the Grand Jury to cross-examine witnesses or to present evidence on his or her own behalf. Generally, the person named as the defendant on a bill of indictment may not be compelled to appear and testify before the Grand Jury in that case.¹⁷²

The law requires that not less than 16 Grand Jurors actually participate in voting on an Indictment or Special Presentment.¹⁷³ If 12 or more Grand Jurors vote in favor of the Indictment, then the Foreperson or Clerk should enter the words “True Bill” in the appropriate space on the Indictment. The Indictment should also show on its face the names of all the Grand Jurors who voted on the Indictment [strike only the names of those who did not participate].¹⁷⁴

If, however, the Grand Jurors vote that there is insufficient evidence to believe that the person named in the Indictment committed the act charged, then the Foreperson or Clerk would enter the words “No Bill” in the appropriate space on the Indictment.¹⁷⁵ If in finding a “No Bill”, the Grand Jury concludes that the Indictment was unfounded or malicious, the Grand Jury may endorse the Indictment as a “Malicious Prosecution”, in which case the person instigating the prosecution (the “Prosecutor”) will be compelled to pay all costs for bringing the unfounded charge.¹⁷⁶

If two successive Grand Juries should make two returns of “No Bill” on the same charge, further prosecution of the same offense is barred, unless the “No Bill” was procured by the fraudulent conduct of the person charged in the Indictment.¹⁷⁷ The Indictment (True Bill or No Bill) should be signed by the Foreperson or acting Foreperson.¹⁷⁸

4. *Actions Taken if the Indictment Is True Billed*

If a “True Bill” is found, the Indictment must be returned in open Court, either by the entire Grand Jury or delivered by the Grand Jury to the sworn Grand Jury bailiff to be returned in open Court.¹⁷⁹ In order for the return to be made in “open Court” it must be made “in the courtroom or place where [C]ourt was being held open to the public with the [J]udge and [C]lerk present.”¹⁸⁰ If an Indictment is not returned in open Court or if it is returned by anyone other than the Grand Jury or bailiff, the defendant can move to have the Indictment dismissed.¹⁸¹

If Court has recessed for the day or the Judge and Clerk are not available when the Grand Jury is ready to have an Indictment returned, the Grand Jury bailiff may hold the Indictment overnight and make the return the next day when Court opens.¹⁸²

After a “True Bill” has been returned, the accused has the opportunity to have a fair and impartial jury determine if he or she is guilty of the crime(s) charged in the Indictment.

5. *Criminal Proceedings Involving Certain Public Officials and Peace Officers.*

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Although generally the accused has no right to appear before the Grand Jury,¹⁸³ Georgia law requires that special procedures be followed when the Grand Jury is considering indicting some current and former public officials or peace officers. These procedures do not apply to all crimes committed that might be committed by an official or officer but only those specifically designated by statute. The Courts have held that these procedures are based on the belief of the legislature that "... the smooth, uninterrupted functioning of government, so important to the public welfare, may be endangered by requiring high public officials to endure a time consuming trial ... (on) an unfounded indictment".¹⁸⁴

Public Officials.

By statute, when the Grand Jury is going to consider indicting certain designated public officials for the offenses listed below, the public official has the right to be present during the presentation of the evidence to the Grand Jury.¹⁸⁵ These public officials are: (1) a state official whose position is created by the Constitution or by a statute;¹⁸⁶ (2) an elected county officer, i.e., Judge of the Probate Court, Clerk of the Superior Court, Tax Receiver, Tax Collector, Tax Commissioner (where such office has replaced the Tax Receiver and Tax Collector) or a County Commissioner;¹⁸⁷ or (3) a mayor or member of a municipal governing authority.¹⁸⁸

Not every offense that these public officials might commit entitles them to be present during the presentation of the evidence.¹⁸⁹ The offense charged in the proposed Bill of Indictment must be one of the following:

- Malpractice, misfeasance, or malfeasance in office;
- Using oppression or tyrannical partiality in the administration or color of office;
- Willfully refusing or failing to preside in or hold court;
- Deliberately delaying or avoiding the due course or proceedings of law; or
- Willfully and knowingly demanding more cost than allowed by law.¹⁹⁰

Current and Former Peace Officers.

A peace officer¹⁹¹ or former peace officer is entitled to the same protections afforded the public officers described above if the Grand Jury is going to consider an Indictment charging the officer present with a crime that is alleged to have occurred while the officer was acting in the performance of his or her duties.¹⁹² If the crime alleged to have been committed was outside the scope of the officer's duties, these rules do not apply.¹⁹³

Procedures in Cases Involving Public Officials and Peace Officers Entitled to Be Present in Grand Jury.

In the cases described above, the accused official or officer has a right to receive a copy of the proposed Indictment at least 15 days before it is presented to the Grand Jury.¹⁹⁴ The accused official or officer is entitled to be told when and where the Grand Jury will consider the charges.¹⁹⁵ The accused has the right to be present, with his or her attorney, in the Grand Jury room during the presentation of all evidence against him but is not permitted to cross-examine the witnesses.¹⁹⁶ The official or officer also may make a sworn statement to the Grand Jury but cannot be subjected to direct or cross-examination.¹⁹⁷

The Supreme Court of Georgia has held that a Grand Jury has no right, in the absence of specific statutory authority, to return a General Presentment that charges a public officer with misconduct in office. If the Grand Jury finds evidence of such misconduct, they are limited to returning an Indictment or Special Presentment charging the official with a crime.¹⁹⁸

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VIII.

CIVIL FUNCTIONS & DUTIES

Since Colonial times, Georgia Grand Juries have been authorized, and in some cases required, to perform duties unrelated to criminal law. These functions, traditionally referred to as civil functions or duties, fall into four categories: Inspections or Investigations, Elections and Voting, Appointments and Nominations, and Miscellaneous Duties. Because in the past some Grand Juries have “exceed[ed] their authority and . . . become involved in politics and local feuds,”¹⁹⁹ the legislature and courts have strictly regulated the Grand Jury’s duties and the procedures the Grand Jury must follow in performing its civil functions.²⁰⁰ The rules which apply to each of the civil functions vary considerably and in most cases are too detailed to be easily summarized in this Handbook. The District Attorney or the Court can advise you about these rules as needed.

A. Inspection or Investigations of Public Property, Records and Offices.

1. *Generally.*

The General Assembly has authorized the Grand Jury to conduct certain civil annual, periodic and optional inspections or investigations of designated public facilities and offices.²⁰¹ Unlike their authority in criminal cases, the Grand Jury may conduct civil inspections or investigations only where specifically authorized by statute.²⁰² In conducting a civil inspection or investigation, the Grand Jury proceedings must be conducted in way that comports with the requirement of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.²⁰³ This means that, at a minimum, a person who is the subject of a civil inspection or investigation be given notice of the proceeding and an opportunity to be heard.²⁰⁴ In addition, the findings that the Grand Jury makes following a civil investigation must be based on admissible evidence.²⁰⁵

a. Annual Inspections.

The Grand Jury is to inspect the condition and operation of the jail at least once each calendar year.²⁰⁶

b. Periodic Inspections.

At least once every 3 calendar years, the Grand Jury is to inspect and examine the offices and operations of the Clerk of Superior Court, Judge of Probate Court, the County Treasurer or depository and the offices of the District Attorney, if located in the county.²⁰⁷ If the District Attorney does not maintain an office in the county, the Grand Jury may inspect the offices of the District Attorney when they deem it necessary.

c. Optional Inspections or Investigations.

Whenever deemed necessary by 8 or more Grand Jurors, the Grand Jury shall appoint a committee of the Grand Jury to inspect or investigate²⁰⁸ the following:

- (1) Any county office;
- (2) Any county building;
- (3) Any public authority of the county;
- (4) Any court or court official of the county;
- (5) The county board of education or county school superintendent; or

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- (6) Any of the records, accounts, property, or operations of any of the entities described above.²⁰⁹
- d. When the Grand Jury conducts a civil investigation or inspection under the 1994 legislation, the District Attorney will advise you concerning the procedures that must be followed. During an authorized inspection or investigation, the Grand Jury or the designated committee is authorized to examine books, records, and accounts, to have witnesses subpoenaed and to hear evidence.²¹⁰ Any oral testimony heard by the Grand Jury must be taken under oath, as unsworn statements are not evidence.²¹¹
- e. The Grand Jury is authorized to appoint one citizen of the county to provide technical expertise during the inspection or investigation.²¹² This technical expert receives the same compensation as Grand Jurors.
- f. The following oath must be administered to witnesses who appear before the Grand Jury during a civil investigation or inspection:
- You do solemnly swear (or affirm) that the evidence you shall give the grand jury in its civil investigation of (here identify the county officer, office or authority being investigated or inspected), shall be the truth, the whole truth and nothing but the truth.*²¹³
- g. The Grand Jury is authorized to prepare and submit for publication reports or presentments based on its inspections or investigations.²¹⁴
2. *Other Inspections, etc. Which the Grand Jury May Conduct.* Several inspections which the Grand Jury can perform were not affected by the 1994 legislation.
- a. *County Tax Collector or Tax Commissioner.* The County Tax Collector or Tax Commissioner is to submit the tax execution docket and cash book to the Grand Jury impaneled for the Spring Term of Superior Court.²¹⁵
- b. *County Treasurer.* At least twice a year, the County Treasurer is to submit a report to the Grand Jury showing the amounts of fines and forfeitures received by him or her, and to whom such funds were disbursed for the 6 month period preceding the report.²¹⁶
- c. *Reports of Receipts and Disbursements.* At each term of Superior Court, the Judge of the Probate Court, the County Treasurer, the Clerk of Superior Court and the Sheriff are to submit a report of any money belonging to the county which was received by them, as well as any expenditures. They are also required to provide the Grand Jury with a copy of the most recent financial statement or annual audit of their office.²¹⁷
- d. *Public Education.* Members of the State Board of Education and any other person having authority to select or aid in the selection of textbooks for the schools are required to report any gifts or offers of compensation or remuneration made to them on behalf of any schoolbook publishing house, corporation, or individual publishing textbooks.²¹⁸
- e. *Child Abuse.* The Child Abuse Protocol Committee is to provide a copy of its annual report to the Grand Jury that meets during the Fall Term of Superior Court.²¹⁹
- f. *County Jail Inmate Records.* The Grand Jury is to examine inmate records at the county jail.²²⁰

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3. *Conducting Inspections or Investigations.*

When the Grand Jury undertakes a civil investigation or inspection, the members must do so in a manner which protects the Constitutional rights of the person who is the subject of the inspection. The Courts have held that, at a minimum, these include notice, the opportunity to present evidence and to respond to the report of the Grand Jury's findings.²²¹ In the case of many public officials, the Courts have held that the public official must be afforded the right to appear with counsel before the Grand Jury, to hear the evidence presented and to give sworn testimony. If the Grand Jury conducts its investigation in a manner that is found to have violated due process, any report or General Presentment is subject to being rejected by the Court²²² or having portions of the report expunged by the Court.²²³

B. Duties Relating to Elections and Voting.

During an election year, depending on the type of voting machines that are used, the Grand Jury may have specific responsibilities before and after a primary or general election. If this is the case in your county, the Judge will instruct you concerning these responsibilities and the District Attorney will advise you concerning the legal requirements which must be followed.²²⁴

C. Appointments or Nominations Made by the Grand Jury.

1. *Offices to Which the Grand Jury May Make Appointments or Nominations.*

- a. *Foreperson of the Grand Jury.* If the Superior Court Judge who impanels the Grand Jury does not appoint the Foreperson, he or she may direct the Grand Jury to elect a Foreperson.²²⁵
- b. *County Board of Equalization.* Members and alternate members of the County Board of Equalization are appointed by the Grand Jury for a 3-year term.²²⁶ In the event of a vacancy, the Grand Jury may appoint a qualified citizen of the county to serve out the remainder of the term of office.
- c. *County Voter Registrars.* The Grand Jury is responsible for submitting to the senior Judge of the Superior Court, a list containing the names of 10 judicious, intelligent and upright citizens of the county for appointment by the Judge as voter registrars.²²⁷

2. *Procedures for Appointments Other Than Foreperson.*²²⁸

Prior to the Grand Jury electing, selecting or appointing anyone to any public office, other than the Foreperson and other officers, the Clerk of Superior Court must publish a notice of the pending selection, election or appointment in the official newspaper of the county at least once a week for 2 weeks during a period not more than 60 days prior to the date of the election, selection or appointment.²²⁹

D. Miscellaneous Duties.

1. *Setting Compensation of Jurors and Bailiffs.*

At the Fall Term, the Grand Jury fixes the compensation to be paid to grand, petit and coroner's inquest jurors and bailiffs.²³⁰ By law, the rate of compensation must be not less than \$5 nor more than \$50 per day for jurors²³¹ and not less than \$5 nor more than \$70 per day for bailiffs.²³² However, any increase in compensation over and above that which was paid bailiffs or jurors the previous year, must be approved by the governing authority of the county.²³³ Any person who is summoned and appears for service as a Grand Juror is entitled to be paid regardless of whether or not he or she serves.²³⁴

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2. *Recommend Change of County Line*

If a petition to change the county line is received from the Judge of the Probate Court, the Grand Jury may hold hearings on the petition. Two-thirds of the Grand Juries in each affected county must approve the petitions before the issue may be considered by the governing authorities of the county. The Grand Jury may also recommend that the Governor appoint a surveyor if the county line is disputed.²³⁵

3. *Historic Preservation.*

The Grand Jury may, by a majority vote, recommend that the county governing authority provide the Probate Court a suitable case or container in which historical materials may be preserved.²³⁶

E. Local Duties.

In addition to the duties and functions summarized in this section, prior to 1982, the General Assembly could have enacted local laws that would provide the Grand Jury with additional duties. Because those duties do not apply in all counties, they are beyond the scope of this Handbook. If there are local laws which provide that the Grand Jury in your county has duties other than those discussed above, the Judge or the District Attorney will advise you.²³⁷

IX. GENERAL PRESENTMENTS & REPORTS

It is customary for the Grand Jury to make a report to the Superior Court either at the end of the Term or when they have completed the majority of their work.²³⁸ This report, traditionally known as a General Presentment, can contain general information about the work of the Grand Jury during the Term, their findings resulting from the performance of their civil duties and making appropriate recommendations in areas within their jurisdiction.²³⁹ The General Presentments may also contain suggestions to the succeeding Grand Jury.²⁴⁰

With some very limited exceptions, the General Presentments are merely the recommendations of the Grand Jurors and are not self-executing.²⁴¹ The Grand Jury may recommend to the presiding Judge that their General Presentments be published and the manner in which they are to be published.²⁴² The Judge is required to review the General Presentments and to determine if they can be filed or published.²⁴³ The general presentments must be returned to the presiding judge “in open court, with the judge presiding and the clerk present” the same as is required for indictments or special presentments.²⁴⁴

By statute, the Grand Jury is required to include certain matters in their General Presentments. These include:

1. A report concerning the results of their inspection of the tax execution docket and cash book of the County Tax Collector or Tax Commissioner. (See p. 18).
2. A report that the Grand Jury has inspected the reports of receipts and disbursements of the Probate Court, Clerk of Superior Court and County Treasurer and found them to be correct. (See p. 18).
3. A report regarding the record of inmates at the county jail. (See p. 18).

When preparing General Presentments, you must be aware that Appellate Courts have imposed limits on the contents allowed. While reports of a general nature concerning areas where the Grand Jury has a statutory duty to inspect or investigate are acceptable, courts have repeatedly held that the Grand Jury cannot include, in a report or General Presentment, comments that charge or accuse identifiable person(s) of misconduct.²⁴⁵ This, the Courts have

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said, can only be done by a True Bill of Indictment or by a Special Presentment charging such person(s) with a crime.

The reason for this, the Georgia Supreme Court has explained, is that “when an indictment is returned, the accused has the right of an open hearing in which to be tried and thereby assert his innocence. Reports (or General Presentments) . . . offer no such right to the one defamed . . . [T]he individual who is named in the report or identifiable from it has little if any opportunity to adequately respond to the report’s accusations.”²⁴⁶

Where the Grand Jury has a clear statutory duty to report its findings, it may make a “fair report . . . even though such reports of necessity incidentally reflect negligence or incompetence . . .”²⁴⁷ In all other instances, the Courts hold that the Grand Jury may make only “general recommendations” that do not contain “reflections of misconduct.”²⁴⁸ If the General Presentments go beyond these limits, the Court may seal or reject all or a portion of them.²⁴⁹ Additionally, any person identified in the General Presentment may have the Court expunge the critical portions from the public records.²⁵⁰

Thus Grand Jurors, including members of Grand Jury committees, must exercise both discretion and care in the drafting of their General Presentments if they contain matters which may be interpreted by others as being critical of any identifiable person or institution. By so doing they will minimize the probability that all or a portion of the General Presentments will be expunged or not accepted by the Court.

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APPENDIX A

PRACTICAL SUGGESTIONS FOR GRAND JURORS

- A. Attend the sessions regularly and on time.
- B. If you are unable to attend be sure to so notify the Foreperson or the District Attorney's office, as the unexpected lack of a quorum causes great inconvenience.
- C. The oath should be administered to witnesses in an impressive manner, so that they will realize that it is a serious judicial hearing, and they must tell the truth.
- D. Pay close attention to the testimony given and the evidence presented. The reputation and freedom of someone depends on what is being told.
- E. Be courteous to the witnesses and to your fellow jurors.
- F. Listen to the evidence and opinions of your fellow jurors but don't be a rubber stamp.
- G. Be independent but not obstinate.
- H. All jurors have an equal voice in determining an Indictment and each juror has the right to state the reasons for his or her views.
- I. Express your opinions, but don't be dictatorial. Every juror has a right to his or her own opinions. You may try to persuade other jurors, but do not try to force him or her to change his or her mind and agree with you. He or she may be right.
- J. Do not discuss cases with your fellow jurors or anyone else when you are outside the jury room.
- K. Be absolutely fair. Every matter that you consider and every person who appears before you should be given equal treatment, regardless of gender, racial or ethnic background, disability, sexual preference, age or ability to speak English.²⁵¹
- L. Wait until the District Attorney, Assistant District Attorneys, witnesses, interpreter or court reporter has left the room before you begin your deliberations or vote on an Indictment or Special Presentment.
- M. A reckless Grand Jury can do as much harm to the community and to law enforcement as a weak Grand Jury.
- N. Your membership on the Grand Jury is a high honor. You are among a relatively small number of citizens of your community who are chosen to serve. Your response should be devoted, trustworthy participation in performing the duties of the Grand Jury. A humorous, but wise quotation attempting to summarize Grand Jury service is that "The Grand Jury should know the difference between sin and crime and act accordingly"

Handbook for Georgia Grand Jurors Annotated

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- ¹ O.C.G.A. §§ 17-7-70, 17-7-70.1, 17-7-71.
- ² *Gordon v. State*, 102 Ga. 673, 679 (1897).
- ³ *Orvis v. State*, 237 Ga. 6 (1976); *Letbedder v. State*, 129 Ga. App. 196 (1973).
- ⁴ O.C.G.A. § 16-1-3(5).
- ⁵ *Howard v. State*, 60 Ga. App. 229, 235 (1939).
- ⁶ 42 C.J.S., Indictment & Information, § 7A.
- ⁷ O.C.G.A. § 15-11-10(1)(A).
- ⁸ O.C.G.A. §§ 15-11-10, 15-11-11.
- ⁹ O.C.G.A. § 17-11-4(a)(2).
- ¹⁰ O.C.G.A. § 15-10-1.
- ¹¹ O.C.G.A. § 36-32-3.
- ¹² O.C.G.A. §§ 16-1-3(9), 17-10-3.
- ¹³ *Curcio v. Sanders*, 109 Ga. App. 548, 551 (1964). *See also* Unif. Super. Ct. R. 36.14.
- ¹⁴ O.C.G.A. § 17-11-4; *Sampson v. State*, 43 Ga. App. 89 (1931); *In re Herring*, 185 Ga. App. 541 (1988).
- ¹⁵ O.C.G.A. § 16-1-3(12).
- ¹⁶ *Melton v. State*, 149 Ga. App. 506, 507 (1979).
- ¹⁷ *Ex Parte Chauvin*, T.U.P. Charlton 14, 1 Ga. Rep. Ann. 8 (Chatham Co. Super Ct. 1805); *Barlow v. State*, 127 Ga. 58, 60 (1906).
- ¹⁸ O.C.G.A. § 15-12-102.
- ¹⁹ O.C.G.A. § 15-12-100(a).
- ²⁰ O.C.G.A. § 15-12-101(b).
- ²¹ *Kenerly v. State*, 311 Ga. App. 190 (2011), cert. denied, 2012 Ga. LEXIS 265 (Ga. 2012).
- ²² *State v. Lampl*, 2015 Ga. LEXIS 186 (Ga. Mar. 16, 2015)
- ²³ O.C.G.A. § 15-7-4.
- ²⁴ O.C.G.A. § 17-3-1(a).
- ²⁵ O.C.G.A. § 17-3-2.1(b) (crime committed on or after July 1, 2012); of the crime was committed prior to July 1, 2012 but on or after July 1, 1992, the statute of limitation is 7 years but the statute does not begin to run until the earlier of the victim turning 16 “or the violation is reported to a law enforcement agency, prosecuting attorney, or other governmental agency.” O.C.G.A. § 17-3-2.1(a); *Tompkins v. State*, 265 Ga. App. 760 (2004), *aff’d in part and remanded in part*, 278 Ga. 857 (2005).
- ²⁶ O.C.G.A. § 17-3-1(d).
- ²⁷ O.C.G.A. § 17-3-1(c).
- ²⁸ O.C.G.A. § 17-3-1(b).
- ²⁹ O.C.G.A. § 17-3-1(b).
- ³⁰ O.C.G.A. § 16-14-8; *Jannuzzo v. State*, 322 Ga. App. 760, 764 (2013).
- ³¹ O.C.G.A. § 17-3-1(c).
- ³² O.C.G.A. §§ 17-3-1; 17-3-2.1.
- ³³ O.C.G.A. § 17-3-2.
- ³⁴ GA. CONST. art. VI, § 4 (1983); O.C.G.A. § 15-6-8.
- ³⁵ O.C.G.A. §§ 15-6-19, 15-6-3.

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- ³⁶ See O.C.G.A. § 15-6-3.
- ³⁷ *Williams v. State*, 107 Ga. App. 794, 795 (1963); *Caldwell v. State*, 253 Ga. 400, 403 (1984).
- ³⁸ Black's Law Dictionary, 1726 (4th Ed. 1968).
- ³⁹ Black's Law Dictionary, 1746.
- ⁴⁰ 1 WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW, 77 (3rd ed. 1922); MARK KADISH, *Behind the Locked Door of An American Grand Jury: Its History, Its Secrecy, and Its Process*, 24 FLA. ST. U. L. REV. 1, 5 - 9 (1996)[hereinafter KADISH].
- ⁴¹ Under Saxon law, the "hundred" was a subdivision of a county which contained at least ten groups of families of freeholders. 1 Blackstone's Commentaries, 113 - 115 (1st Amer. Ed. 1771); Black's Law Dictionary, 874.
- ⁴² *R. v. Earl of Shaftesbury*, 8 St. Tr. 771 (K.B. 1681).
- ⁴³ Magna Carta, Art. 39 (1225). Although it is commonly asserted that right to indictment by a Grand Jury flows from the Magna Carta, the Grand Jury is not mentioned in either the 1215 or 1225 versions. Article 39 merely provides "No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land." *Id.* See also *Hurtado v. California*, 110 U.S. 516, 531-532 (1884).
- ⁴⁴ KADISH, *supra* note 23 at 7, 10; RICHARD D. YOUNGER, THE PEOPLES' PANEL: THE GRAND JURY IN THE UNITED STATES, 1634-1941, at 56 (American History Research Center, Brown University Press 1963).
- ⁴⁵ 1 REV. WILLIAM BACON STEVENS, M.D., A HISTORY OF GEORGIA 221(1847); STEVEN'S JOURNAL (1737 - 1740), reprinted in 4 Chandler, COLONIAL RECORDS OF GEORGIA, 10 (1906).
- ⁴⁶ SARAH S. BEALE & WILLIAM C. BRYSON, GRAND JURY LAW AND PRACTICE § 1:03 (1996)[hereinafter BEALE & BRYSON].
- ⁴⁷ KENNETH COLEMAN, THE AMERICAN REVOLUTION IN GEORGIA, 1763 - 1789, 195 (1955).
- ⁴⁸ See, e.g. *General Presentment of the Screven Co. Grand Jury, Feb. 21, 1795*, The Augusta Chronicle and Gazette of the State, Mar. 14, 1795, Vol. IX, No. 440.
- ⁴⁹ SAYE, A CONSTITUTIONAL HISTORY OF GEORGIA, 151, 279 (1970).
- ⁵⁰ BEALE AND BRYSON, *supra* note 28, § 1:05, at 23.
- ⁵¹ 1869 Ga. L. p. 139.
- ⁵² *Kelly v. Tanksley*, 105 Ga. App. 65 (1961).
- ⁵³ 1974 Ga. L. p. 270, codified as O.C.G.A. §§ 15-12-100 to 15-12-102.
- ⁵⁴ O.C.G.A. § 15-12-102.
- ⁵⁵ O.C.G.A. §§ 15-12-100, 15-12-102.
- ⁵⁶ *Kenerly v. State*, 311 Ga. App. 190 (2011), cert. denied, 2012 Ga. LEXIS 265 (Ga. 2012).
- ⁵⁷ O.C.G.A. § 15-12-101(b).
- ⁵⁸ See, e.g. 1816 Ga. L. p. 123 and 1837 Ga. L. p. 234, abolished by 1915 Ga. L. p. 372.
- ⁵⁹ O.C.G.A. §§ 15-12-40.1, 15-12-4(b); *Reich v. State*, 53 Ga. 73, 75 (1874).
- ⁶⁰ O.C.G.A. § 15-12-60.
- ⁶¹ O.C.G.A. § 15-12-1.1(b).
- ⁶² O.C.G.A. § 15-12-1.1(c); Ga. Op. Att'y Gen. 80-125; *Pundt v. Pendleton*, 167 F. 997 (N.D. Ga. 1909); *Ex parte White*, 228 F. 88, 89 (D.N.H. 1915). Members of the Georgia National Guard, while serving on state active duty orders, may also be exempted from jury duty. O.C.G.A.

§§ 15-12-1.1(c); § 38-2-276. The latter Code section suggests that members of the organized militia are exempt from jury duty. However, the Attorney General has held that the exemption has been repealed by implication. Ga. Op. Att’y Gen. 67-296, 1967 Ga. AG LEXIS 436.

⁶³ O.C.G.A. § 15-12-1.1(a)(3).

⁶⁴ O.C.G.A. § 15-12-1.1(a)(5).

⁶⁵ O.C.G.A. § 15-12-1.1(a)(2).

⁶⁶ O.C.G.A. § 15-12-1.1(a)(4).

⁶⁷ O.C.G.A. § 15-12-4(b). Non-citizens who are lawful residents of Georgia (permanent resident aliens and holders of long term visas) and have a Georgia driver’s license or identification card issued prior to 2011 may be **summoned** for jury duty because citizenship status was not included in the records maintained by the Georgia Department of Driver Services prior to July 1, 2011. Driver’s license or ID card records created or renewed after that date should have citizenship included in the record.

⁶⁸ O.C.G.A. § 15-12-60(b); *State v. Dempsey*, 290 Ga. 763 (2012); *Ingram v. State*, 253 Ga. 622 (1984); *King v. State*, 173 Ga. App. 838 (1985). Note: While peace officers are subject to a challenge for cause which will prevent them from serving as a petit juror in a criminal case, *Hutcheson v. State*, 246 Ga. 13, 13-14 (1980), they may serve on a Grand Jury, *Stinski v. State*, 281 Ga. 783, 788 (2007), subject to the normal rules for disqualification of a grand juror in a particular case.

⁶⁹ O.C.G.A. § 15-12-4(a).

⁷⁰ O.C.G.A. § 15-12-60(a).

⁷¹ O.C.G.A. § 15-12-60(c)(1), as amended by Ga. L. 2015, p. _____ (2015 HB 233).

⁷² Ga. Const., Art. II, Sect. I, Para. III(a); O.C.G.A. § 21-2-216(b).

⁷³ Ga. Const., Art. IV, Sect. II, Para. II(a); for more information see Ga. Bd. Of Pardons & Paroles, Pardons & Restoration of Rights, <http://pap.georgia.gov/pardons-restoration-rights> (site visited Sep. 16, 2013).

⁷⁴ O.C.G.A. § 15-12-60(c)(2), as amended by Ga. L. 2015, p. _____ (2015 HB 233).

⁷⁵ O.C.G.A. § 15-12-60(c)(3), as amended by Ga. L. 2015, p. _____ (2015 HB 233).

⁷⁶ O.C.G.A. § 15-12-60(c)(4), as amended by Ga. L. 2015, p. _____ (2015 HB 233).

⁷⁷ O.C.G.A. § 15-12-60(c)(5), as amended by Ga. L. 2015, p. _____ (2015 HB 233).

⁷⁸ O.C.G.A. § 15-12-60(c)(6), as amended by Ga. L. 2015, p. _____ (2015 HB 233).

⁷⁹ O.C.G.A. § 15-12-66.

⁸⁰ O.C.G.A. § 16-10-70.

⁸¹ See e.g., *State v. Dempsey*, 290 Ga. 763, 764 (2013). The 2015 amendment to O.C.G.A. § 15-12-60 added a new subsection (d) that provides that if a person should not have been a grand juror because he or she was a convicted felon, or had been adjudicated to be mentally incompetent, was in a pre-trial diversion program or drug/mental health/veterans program or was serving a first offender sentence, any indictment returned “shall not be quashed solely as a result of such ineligibility.” Subsection (d) does not apply to ineligibility based on lack of citizenship, residency or holding an elected public office.

⁸² O.C.G.A. § 15-1-4.

⁸³ O.C.G.A. §§ 15-12-40.1(b), 15-12-40.1(c).

⁸⁴ O.C.G.A. §§ 15-6-50.2, 15-12-40.1(c).

⁸⁵ O.C.G.A. §§ 15-6-50.2(d), 15-12-40.1.

⁸⁶ O.C.G.A. § 15-12-40.1(e).

⁸⁷ O.C.G.A. § 15-12-1(2).

⁸⁸ O.C.G.A. § 15-12-62.1.

⁸⁹ O.C.G.A. § 15-12-65.1.

⁹⁰ O.C.G.A. § 15-12-11(b).

⁹¹ O.C.G.A. § 15-12-11(c).

⁹² O.C.G.A. § 15-12-10.

⁹³ O.C.G.A. § 15-12-66.1.

⁹⁴ O.C.G.A. § 15-12-66(b).

⁹⁵ *State v. Dempsey*, 290 Ga. 763 (2012); *Stapleton v. State*, 19 Ga. App. 36 (1916); *see also Sowers v. State*, 194 Ga. App. 205 (1990); *Farrar v. State*, 187 Ga. 401 (1939).

⁹⁶ O.C.G.A. § 15-12-1.1(a)(1).

⁹⁷ O.C.G.A. § 15-12-1.1(a)(2).

⁹⁸ O.C.G.A. § 15-12-1.1(a)(3).

⁹⁹ O.C.G.A. § 15-12-1.1(a)(4).

¹⁰⁰ O.C.G.A. § 15-12-1.1(a)(5).

¹⁰¹ O.C.G.A. § 15-12-1.1(c)(2).

¹⁰² O.C.G.A. § 15-12-1.1(a)(1) *as amended by* 2011 Ga. L. p. 59, § 1-5 at 95 (2011 H.B. 415) provides that persons who are permanently mentally or physically disabled may be permanently excused from jury duty. However, this provision must be construed in light of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et seq. *See also* 29 C.F.R. § 35.101, et seq., which prohibits State and local governments from discriminating against persons with disabilities “who, with or without reasonable accommodation, can perform the essential functions” of the job. 42 U.S.C. §§ 12111(8), 12132..

¹⁰³ Each of the provisions allowing deferment or excusal from jury duty has specific requirements that must be met before the Judge can grant the deferment or excuse. Most require the person seeking deferment or excusal to present an affidavit to the Court, *see* O.C.G.A. §§ 15-12-1.1(a)(3); 15-12-1.1(a)(4), or provide other documentation, *see* O.C.G.A. § 15-12-1.1(a)(5) (statement of a physician, or other medical provider required); O.C.G.A. § 15-12-1.1(c)(2) (copy of a valid military identification card and execution of an affidavit in the form required by the Court).

¹⁰⁴ O.C.G.A. § 15-12-1.1(a)(1) provides that persons who are permanently mentally or physically disabled may be permanently excused from jury duty. However, this provision must be construed in light of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et seq. *See also* 29 C.F.R. § 35.101, et seq., which prohibits State and local governments from discriminating against persons with disabilities “who, with or without reasonable accommodation, can perform the essential functions” of the job. 42 U.S.C. §§ 12111(8), 12132.

¹⁰⁵ O.C.G.A. § 15-12-61(a).

¹⁰⁶ O.C.G.A. § 15-12-61(a).

¹⁰⁷ *Johnson v. State*, 235 Ga. 486, 493 (1975).

¹⁰⁸ O.C.G.A. § 17-7-55.

¹⁰⁹ O.C.G.A. §§ 15-12-63, 17-7-55.

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- ¹¹⁰ *State v. Grace*, 263 Ga. 220 (1993); *Bird v. State*, 142 Ga. 596 (1914); O.C.G.A. § 15-6-19.
- ¹¹¹ *Ingram v. State*, 253 Ga. 622, 627 (1984).
- ¹¹² O.C.G.A. § 15-12-67(b).
- ¹¹³ *Earl of Shaftesbury*, *supra* note 24 at 759.
- ¹¹⁴ O.C.G.A. § 15-12-67(b).
- ¹¹⁵ *State v. Grace*, 263 Ga. 220, 221 (1993).
- ¹¹⁶ *Thornton v. Marshall*, 92 Ga. 548 (1893); *Cook v. Sikes*, 210 Ga. 722 (1954); O.C.G.A. § 51-7-46 (immunity of Grand Jurors from action for malicious prosecution).
- ¹¹⁷ In the pre-1994 edition, the only penalty mentioned was prosecution for embracery, O.C.G.A. § 16-10-91. However, Grand Jurors can be subject to a number of other penalties including contempt, and prosecution under O.C.G.A. §§ 16-10-1, 16-10-2, 16-10-70, or 16-10-72.
- ¹¹⁸ O.C.G.A. § 15-12-69.
- ¹¹⁹ *State v. Grace*, 263 Ga. 220 (1993); *see also Johnson v. State*, 59 Ga. 189, 192 - 94 (1877); *Camp v. Aetna Insurance Co.*, 170 Ga. 46, 47 - 48, 50 (1930); *Wood v. State*, 103 Ga. App. 305, 306 - 307, 317, 319 (1961), *rev'd on other grounds*, 370 U.S. 375 (1962).
- ¹²⁰ O.C.G.A. § 15-12-71(a).
- ¹²¹ Ga. L. 1994, p. 874 officially changed the title of the presiding officer of the Grand Jury from Foreman to Foreperson based on the recommendation of the Chief Justice's Commission on Gender Bias in the Judicial System.
- ¹²² *Barlow v. State*, 127 Ga. 58, 62 (1906); *White v. State*, 27 Ga. App. 769 (1921); *Ellison v. State*, 82 Ga. App. 760 (1951).
- ¹²³ O.C.G.A. § 15-12-67(a).
- ¹²⁴ If the Foreperson is absent and there is no assistant foreperson, the court can appoint an acting Foreperson, *see generally Dickens v. State*, 137 Ga. 523, 526 (1912).
- ¹²⁵ The position of Grand Jury Clerk apparently dates to the Common Law, Stokes, C.J. DIRECTIONS FOR THE OFFICERS OF HIS MAJESTY'S GENERAL COURT AND SESSIONS OF OYER AND TERMINER, *reprinted in* Surrency, DIRECTIONS FOR HOLDING COURT IN COLONIAL GEORGIA, 2 AMER. J. OF LEGAL HISTORY, 321, 332 (1958) [hereinafter STOKES]. In 1994, O.C.G.A. § 15-12-61(b) was enacted which mentioned the Grand Jury Clerk as one of the two officers of a previous Grand Jury who were authorized to appear at the succeeding Grand Jury for the purpose of "reviewing and reporting the actions of the immediately preceding Grand Jury." The reference to the Grand Jury Clerk was removed by 2011 Ga. L. p. 59, § 1-27 at 661.
- ¹²⁶ These are only suggested duties for the Clerk as none are specified in the Code, *see* O.C.G.A. § 15-12-61. There is no requirement that a Georgia Grand Jury keep minutes of its proceeding. *Thompson v. State*, 18 Ga. App. 488 (1916).
- ¹²⁷ O.C.G.A. § 15-6-35..
- ¹²⁸ O.C.G.A. § 15-12-69.; *Zugar v. State*, 194 Ga. 285 (1942).
- ¹²⁹ O.C.G.A. § 15-18-6(2).
- ¹³⁰ *Daniel v. Yow*, 226 Ga. 544 (1970).
- ¹³¹ *State v. Cook*, 172 Ga. App. 433, 440 (1984); *s.c.*, 256 Ga. 808 (1987). Other employees of the District Attorney may assist with logistical support of the Grand Jury but, they cannot be present in the room when witnesses are testifying or when the grand jury is deliberating. *Colon v. State*, 275 Ga. App. 73, 77 (2005).

¹³² O.C.G.A. §§ 15-18-6(4), 24-13-21(e); *In re Lester*, 77 Ga. 143, 148 (1886).

¹³³ O.C.G.A. § 15-18-6(2).

¹³⁴ O.C.G.A. §§ 15-18-6(4) (draw indictments or presentments), 24-13-21(e) (subpoenas).

¹³⁵ O.C.G.A. §§ 24-6-604 (foreign language interpreters), 24-6-650, et seq. (hearing impaired); see also Ga. Rules for Use of Interpreters for Non-English Speaking Persons, GA. COURT RULES AND PROCEDURE-STATE, p. 1713, 1716 (West, 2013).

¹³⁶ O.C.G.A. § 15-12-83 (counties with a population of 150,000 or more). Recording of witness testimony is only required by statute when the witness has been granted immunity. O.C.G.A. § 24-5-507(a). In counties with a population of more than 200,000 people, an employee of the District Attorney's office may use a recording device. In either case the stenographer, court reporter or operator must be sworn. O.C.G.A. § 15-12-83(b). In counties with less than 150,000 population, if a recording device is used, it should be operated by the District Attorney or an Assistant District Attorney. For cases upholding this procedure, see *Reg. v. Hughes*, 1 Car. & K. 519, 525, 174 Eng. Rep. 919, 923 (Q.B. 1844); *United States v. Reed*, 2 Blatchf. 435, 27 Fed. Cas. 727 (C.C.N.D.N.Y. 1852); *United States v. Heitze*, 177 F. 170, 172 (C.C.S.D.N.Y. 1910); *United States v. Amazon Industrial Chemical Corp.*, 55 F.2d 254, 259 (D. Md. 1931); *Commonwealth v. Hedges*, 44 Pa. Super. 157, 162 (1910); *State v. Brewster*, 70 Vt. 341, 40 A. 1037, 42 L.R.A. 444 (1898); see also Annot., *Presence of Unauthorized Persons During State Grand Jury Proceedings as Affecting Indictment*, 23 A.L.R.4th 397, §16 at 450 (1983)

¹³⁷ O.C.G.A. § 15-12-61(b).

¹³⁸ O.C.G.A. § 16-12-71(b)(4) (2013).

¹³⁹ O.C.G.A. § 16-12-71(b)(4) (2013).

¹⁴⁰ O.C.G.A. § 15-12-61(a). While the Georgia Courts have not addressed the issue of what constitutes a quorum, O.C.G.A. § 15-12-61(a) (2011) provides that a "grand jury **shall** consist of *not less than 16* nor more than 23 persons. The votes of *at least 12* grand jurors **shall** be necessary..." See Fed. R. Crim. P. 6(a)(1). Other courts which have considered this question where there were similar statutes or court rules, have held that 16 Grand Jurors are required for a quorum. *United States v. Leverage Funding Systems, Inc.*, 637 F.2d 645, 648 (9th Cir. 1980), *cert. denied*, 452 U.S. 961 (1981).

¹⁴¹ Unlike trial jurors, grand jurors are not required to be impartial. *Brown v. State*, 295 Ga. 240, 241-242 (2014)

¹⁴² O.C.G.A. § 15-12-70.

¹⁴³ O.C.G.A. § 15-12-70.

¹⁴⁴ O.C.G.A. § 15-12-7.

¹⁴⁵ O.C.G.A. § 15-12-67(b).

¹⁴⁶ *Howard v. State*, 60 Ga. App. 229 (1939); see also KADISH at 12-22.

¹⁴⁷ BARON JOHN SOMERS, THE SECURITY OF ENGLISHMEN'S LIVES, OR THE TRUST, POWER AND DUTY OF THE GRAND JURIES OF ENGLAND, 57 (London, 1681).

¹⁴⁸ *Colon v. State*, 275 Ga. App. 73, 75-78 (2005); *Mach v. State*, 109 Ga. App. 154 (1964); *McClendon v. May*, 37 F. Supp. 2d 1371 (S.D. Ga. 1999); 1997 Ga. Op. Att'y Gen. U97-3 (1997).

¹⁴⁹ O.C.G.A. §§ 15-12-73.

¹⁵⁰ O.C.G.A. § 15-12-72.

¹⁵¹ Unlike in Federal Court, there is no constitutional right to an indictment by a Grand Jury in Georgia. *Webb v. Henlery*, 209 Ga. 447, 448 (1953), *overruled by Garmon v. Johnson*, 243 Ga. 855 (1979). However, the grand jury is referred to several times in the Georgia Constitution. Ga. Const., Art. I, Sect. I, Para. XI(c); Art. II, Sect. III, Para. I; and Art. VI, Sect. VII, Para. VII.

¹⁵² O.C.G.A. §§ 17-7-71, 15-7-46.

¹⁵³ See O.C.G.A. § 17-7-70.1. The crimes are: theft by taking, O.C.G.A. § 16-8-2; theft by shoplifting § 16-8-14; forgery in the first and second degree, O.C.G.A. §§ 16-9-1; 16-9-2; bad checks, O.C.G.A. § 16-9-20; financial transaction card theft, O.C.G.A. § 16-9-31; financial transaction card fraud, O.C.G.A. § 16-9-33; unauthorized use of a financial transaction card, O.C.G.A. § 16-9-37; escape, O.C.G.A. § 16-10-52; and habitual violator, O.C.G.A. § 40-5-58.

¹⁵⁴ O.C.G.A. § 17-7-71.

¹⁵⁵ O.C.G.A. § 15-11-2.

¹⁵⁶ *Cleland v. United States Fidelity & Guarantee, Ins. Co.*, 99 Ga. App. 130 (1959).

¹⁵⁷ O.C.G.A. §§ 17-7-20 to 17-7-34.

¹⁵⁸ O.C.G.A. § 15-18-6(4).

¹⁵⁹ O.C.G.A. § 15-12-74.

¹⁶⁰ *Beckham v. O'Brien*, 176 Ga. App. 518, 521 (1985).

¹⁶¹ *In re Lester*, 77 Ga. 143, 148 (1886).

¹⁶² O.C.G.A. § 24-13-21(e); *In re Lester*, at 148; *Morris v. State of Georgia*, 246 Ga. 510 (1980); *Vaughn v. State*, 259 Ga. 325 (1989); *Jones v. State*, 99 Ga. App. 858 (1959).

¹⁶³ O.C.G.A. § 15-12-68.

¹⁶⁴ O.C.G.A. § 17-8-52.

¹⁶⁵ Ga. L. 1997, p. 1499 altered the long standing Georgia rule that the oath administered to a witness before the Grand Jury must exactly follow the statutory oath. See *Williams v. State*, 181 Ga. App. 204 (1986). The 1997 legislation also eliminated the requirement that the oath include the name of the case and the offense charged and further provided that, “[a]ny oath given that substantially complies with the language in this Code section shall subject the witness to the provisions of Code section 16-10-70.”

¹⁶⁶ *Anderson v. State*, 258 Ga. 70 (1988).

¹⁶⁷ *Beckman v. State*, 229 Ga. 327 (1972); *Ashburn v. State*, 15 Ga. 246 (1853).

¹⁶⁸ 1997 Ga. Op. Att’y Gen. U97-3 (1997).

¹⁶⁹ *Colon v. State*, 275 Ga. App. 73, 77-78 (2005); *Colwell v. State*, 280 Ga. 291, 292 (2006) (Sears, C.J., dissenting); *McClendon v. May*, 37 F. Supp. 2d 1371, 1381 (S.D. Ga. 1999), *aff’g* 212 F.3d 599 (11th Cir. 2000); 1997 Ga. Op. Att’y Gen. U97-3 (1997); 38 C.J.S. Grand Juries § 40.

¹⁷⁰ *State v. Auerswald*, 198 Ga. App. 183 (1990); *Nelson v. State*, 247 Ga. 172, 174 (1981).

¹⁷¹ See *Johnson v. State*, 242 Ga. 822 (1979); *Oglesby v. State*, 121 Ga. 602 (1905).

¹⁷² *State v. Butler*, 177 Ga. App. 594 (1986), relied on *Jenkins v. State*, 65 Ga. App. 16 (1941), which was generally cited for the proposition that the defendant could not be compelled to appear before the grand jury. However, the Georgia Supreme Court in *State v. Lampl*, 2015 Ga. LEXIS 186 (Ga. Mar. 16, 2015), limited *Jenkins* and *Butler* to situations where the witness is also named as a defendant in the indictment that is under consideration. The court held that there is no prohibition on a grand jury compelling someone who is a “target” of a grand jury

investigation to appear as a witness and then later indicting him or her. There are no Georgia cases discussing whether or not the target of a State Grand Jury investigation (other than a public official) may voluntarily appear and testify.

¹⁷³ O.C.G.A. § 15-12-61(a).

¹⁷⁴ *Willerson v. State*, 14 Ga. App. 451 (1914).

¹⁷⁵ O.C.G.A. § 15-12-61(a) provides that “[t]he votes of at least 12 grand jurors shall be necessary to find a bill of indictment or to make a presentment.” There is disagreement in Georgia whether this sentence means that 12 Grand Jurors have to vote in favor of a “No Bill.” Within some circuits, the long-standing practice has been to treat an Bill of Indictment that failed to receive 12 votes in favor of a True Bill as a “No Bill.” In other circuits, an equally long-standing practice requires that a separate vote be taken to see if 12 Grand Jurors are in favor of a “No Bill” before a “No Bill” will be returned to the Court. At Common Law, at least 12 Grand Jurors had to agree to the return of either a True Bill or a No Bill. 4 BLACKSTONE’S COMMENTARIES, 301 (1st Amer. Ed 1772). In *Nelson v. State*, 247 Ga. 172, 174 (1981), the court held that “mere failure of the Grand Jury to indict does not constitute the return of a no bill.” See also *State v. Auerswald*, 198 Ga. App. 183 (1990). However, in *Williams v. State*, 13 Ga. App. 83 (1913), the Court citing Sir Matthew Hale, held that if the Grand Jury is presented a Bill of Indictment charging murder, but returns a “True Bill” for voluntary manslaughter, it “is the equivalent to the finding of ‘No Bill’ as to the higher grade of homicide . . .” *Ibid.* at 84. The Grand Jury is required to return Indictments which have been “No Billed” to the Court although the procedure set forth in the Uniform Rules of the Superior Court is far less formal than in the case of a “True Bill.” See U.S.C.R. § 36.14.

¹⁷⁶ O.C.G.A. § 17-11-4(a)(1).

¹⁷⁷ O.C.G.A. § 17-7-53.

¹⁷⁸ *White v. State*, 93 Ga. 47, 50-51 (1893); *Taylor v. State*, 121 Ga. 362, 363-364 (1904).

¹⁷⁹ *State v. Brown*, 293 Ga. 493 (2013); *Zugar v. State*, 194 Ga. 285 (1942); *Sampson v. State*, 124 Ga. 776, 778 (1906); *Danforth v. State*, 75 Ga. 614, 620-621 (1886).

¹⁸⁰ See *Zugar*, 194 Ga. at 289.

¹⁸¹ *Cadle v. State*, 101 Ga. App. 175 (1960).

¹⁸² *Dalton v. State*, 100 Ga. App. 732 (1959).

¹⁸³ *Orkin v. State*, 236 Ga. 176 (1976).

¹⁸⁴ *Sweeney v. Balkcom*, 358 F.2d 415, 419 (5th Cir. 1966), *s.c.*, 219 Ga. 292 (1965).

¹⁸⁵ Prior to July 1, 2001, this section also applied to former public officials, *Dudley v. State*, 273 Ga. 466, 467 (2001), but the 2001 legislation limited the application of O.C.G.A. § 45-11-4 to current office holders only. *Id.*; O.C.G.A. § 45-11-4(e).

¹⁸⁶ O.C.G.A. § 45-15-11(a state official is one whose office is created by the State Constitution or by statute and whose duties are prescribed by law); *Jones v. Mills*, 216 Ga. 616 (1961); *Cadle v. State*, 101 Ga. App. 175 (1960).

¹⁸⁷ O.C.G.A. § 45-11-4(a)(1).

¹⁸⁸ O.C.G.A. § 45-11-4(a)(2).

¹⁸⁹ O.C.G.A. § 45-11-4(b).

¹⁹⁰ O.C.G.A. § 45-11-4(b); *State v. West*, 283 Ga. App. 302, 304 (2007).

¹⁹¹ See O.C.G.A. § 16-1-3(11). The term “peace officer” would include sheriffs, deputy sheriffs, county and municipal police officers and state corrections officers. *State v. Roulain*, 159 Ga. App. 233, 233-234 (1981).

¹⁹² O.C.G.A. § 17-7-52.

¹⁹³ See *Mize v. State*, 152 Ga. App. 190 (1979) (burglary committed by officer while on duty not within scope of duties); *Morrill v. State*, 216 Ga. App. 468, 469-70 (1995)(burglary, armed robbery, aggravated assault and possession of a firearm during the commission of a crime); *Gober v. State*, 203 Ga. App. 5 (1992), *overruled on other grounds by Dudley v. State*, 273 Ga. 466, 468 (2001) (rape); *State v. Galloway*, 270 Ga. App. 184, 185 (2004) (rape and sexual assault); *Wiggins v. State*, 280 Ga. 268, 270 (2006) (cruelty to children).

¹⁹⁴ O.C.G.A. § 45-11-4(f).

¹⁹⁵ *State v. Smith*, 286 Ga. 409 (2010), *aff’g* 297 Ga. App. 300 (2009).

¹⁹⁶ O.C.G.A. § 45-11-4(g).

¹⁹⁷ *Id.*

¹⁹⁸ *Kelly v. Tanksley*, 105 Ga. App. 65 (1961); *Thompson v. Macon-Bibb Co. Hosp. Auth.*, 246 Ga. 777 (1980), *aff’g* 154 Ga. App. 766 (1980); *In re Floyd County Grand Jury Presentments for May Term 1996*, 225 Ga. App. 705 (1997).

¹⁹⁹ *In re Floyd County Grand Jury Presentments for May Term 1996*, 225 Ga. App. 705 (1997).

²⁰⁰ O.C.G.A. § 15-12-71(a); *Hobbs v. Peavy*, 210 Ga. 671 (1954).

²⁰¹ O.C.G.A. § 15-12-71 is substantially similar to statutes in New York, California, Florida and New Jersey which give grand juries in those states the authority to conduct civil (non-criminal) investigations and to issue reports of their findings. BEALE & BRYSON, *supra* note 28. See especially, N.Y. Crim. Proc. L. § 190.85. These statutes have generally been upheld but in so doing the courts have required the Grand Juries to follow certain due process requirements similar to those described by Chief Justice Hill in his special concurrence to *Thompson v. Macon - Bibb Co. Hospital Auth.*, 246 Ga. 777 (1980), *aff’g* 154 Ga. App. 766 (1980). See *In re Second Report of November 1968 Grand Jury of Erie Co.*, 26 N.Y. 2d 200 (1970). Since Georgia’s Appellate Courts have held that “the judicial construction already placed on a similar statute of another State in effect at the time of the adoption of the Georgia Act is considered to accompany it and is treated as incorporated therein,” *Todd v. State*, 228 Ga. 746, 750 (1972); *Tamiami Trail Tours, Inc. v. Ga. Public Service Com’n.*, 213 Ga. 418, 424 (1957); *Atlantic States Constr. Co. v. Beavers*, 169 Ga. App. 584, 586 (1984), it is appropriate to look to the cases decided under the New York statutes in construing O.C.G.A. § 15-12-71.

Prior to July 1, 1994, the Grand Jury conducted physical inspections of the county jail, county public buildings, and the records of the Clerk of Superior Court, the District Attorney, Tax Collector and the Probate Court Judge. In addition, a number of county officers, including the County Treasurer, Sheriff and County School Superintendent were required to submit reports to the Grand Jury at least annually. None of the information was given to the Grand Jury under oath and the Grand Jury could not subpoena witnesses or compel the production of evidence, 1987 Ga. Op. Att’y Gen. U87-20 (1987); 1985 Ga. Op. Att’y Gen. U85-28 (1985); but see former O.C.G.A. § 15-12-76, repealed by 1994 Ga. L. p. 607, 614. The Grand Jury could and, in a few

cases, was required to include comments about these inspections in the General Presentments which the Grand Jury returned at the end of the Term.

²⁰² O.C.G.A. § 15-12-71(a); *Hobbs v. Peavy*, 210 Ga. 671 (1954). Thus, unless specifically authorized by statute or when specifically charged by the presiding judge, Grand Juries have no authority to inspect or conduct investigations of municipal offices or facilities, *State v. Lampl*, 2015 Ga. LEXIS 186 (Ga. Mar. 16, 2015); 1988 Ga. Op. Att’y Gen. U88-2 (1988); *City of Kennesaw v. Ravan*, 245 Ga. 226 (1980), or state government officers or agencies, *Floyd Co. Grand Jury v. Dept. Of Family & Children Services*, 218 Ga. App. 832 (1995); *In re: Floyd Co. Grand Jury Presentments May Term 1996*, 225 Ga. App. 707, 708 (1997); 1985 Ga. Op. Att’y Gen. U85-28 (1985). 1994 Ga. L. p. 874 amended subsection (a) to add the words “or as ordered by any judge of the superior court.” This language appears to be a restatement of the Common Law authority of the presiding judge to charge the Grand Jury “on matters of public interest,” 18 HALISBURY, THE LAWS OF ENGLAND, Juries § 589 (1st Ed. 1909). However, it could be interpreted to give Superior Court Judges broad authority to direct the Grand Jury. *See generally, Johnson v. State*, 59 Ga. 189, 192 - 194 (1877).

²⁰³ *Thompson v. Macon-Bibb Co. Hospital Auth.*, 246 Ga. 777 (1980), *aff’g* 154 Ga. App. 766 (1980).

²⁰⁴ *Thompson v. Macon-Bibb Co. Hospital Auth.*, 246 Ga. 777 (1980), *aff’g* 154 Ga. App. 766 (1980); *In re July-August, 2003 DeKalb County Grand Jury*, 265 Ga. App. 870, 871 (2004).

²⁰⁵ O.C.G.A. § 24-1-2(c)(2) provides that the rules of evidence (Title 24) do not apply to “[c]riminal proceedings before grand juries.” (emphasis added) Based on the rule of statutory construction “‘expressio unius est exclusio alterius’ — ‘the express mention of one thing excludes all others,’” *Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 363 (2012), it appears that the legislature intended to have the rules of evidence apply to civil proceedings before Georgia grand juries. Compare O.C.G.A. § 24-1-2(c)(2) with Fed. R. Evid. 1101(d)(3) (“These rules--except for those on privilege--do not apply to . . . grand-jury proceedings”).

²⁰⁶ O.C.G.A. § 15-12-71(b)(1).

²⁰⁷ O.C.G.A. § 15-12-71(b)(1).

²⁰⁸ O.C.G.A. § 15-12-71(b)(2); *In re: Floyd Co. Grand Jury Presentments May Term 1996*, 225 Ga. App. 709 – 710 (1997); *see also Thompson v. Macon-Bibb Co. Hospital Auth.*, 246 Ga. 777, 778 (1980), *aff’g* 154 Ga. App. 766 (1980); *In re Bick*, 82 Misc. 2d 1043 (1975).

²⁰⁹ O.C.G.A. § 15-12-71(b)(2).

²¹⁰ O.C.G.A. § 15-12-71(c). *Matter of Additional Grand Jury, Orange Co., May-June 1990 Term*, 182 A.2d 688 (1992); *see also State v. Porro*, 152 N.J. Super. 179 (1977).

²¹¹ *State v. Bartel*, 223 Ga. App. 696 (1996); O.C.G.A. § 24-1-2(c)(3); *Hilson v. State*, 204 Ga. App. 200, 202 (1992); *Belcher v. State*, 173 Ga. App. 509 (1985); and *Walters v. State*, 128 Ga. App. 232, 234 (1973). *See also Huiet v. Schwob Manufacturing Co.*, 196 Ga. 855, 859 (1943). **NOTE:** The court in *Bartel* held that this requirement also applied to civil investigations by special purpose grand juries impaneled pursuant to O.C.G.A. § 15-12-100, et seq.

²¹² O.C.G.A. § 15-12-71 (b)(4); *see also Daniel v. Yow*, 226 Ga. 544 (1970); *Watkins v. Tift*, 177 Ga. 640 (1933); *Richter v. Thomas Co. Comm’n*, 152 Ga. App. 332 (1979).

²¹³ *State v. Bartel*, 223 Ga. App. 696 (1996) (sanction of oath or affirmation required in grand jury civil investigations or inspections. O.C.G.A. § 24-9-60 provides that “The sanction of an

oath or affirmation equivalent thereto shall be necessary to the reception of **any oral evidence.**” (Emphasis added) While the Code does not provide the wording for a witness oath in civil cases, the language shown above is substantially the same oath as the one commonly administered in civil cases. See BROWN, GEORGIA PLEADING, PRACTICE & LEGAL FORMS, § 24-9-60, p. 137 (1992).

²¹⁴ O.C.G.A. § 15-12-71(b)(3).

²¹⁵ O.C.G.A. § 48-5-161(d).

²¹⁶ O.C.G.A. § 15-21-7(a).

²¹⁷ O.C.G.A. § 36-1-7(a).

²¹⁸ O.C.G.A. § 20-2-10.

²¹⁹ O.C.G.A. § 19-15-2.

²²⁰ O.C.G.A. § 42-4-8.

²²¹ *In re July-August, 2003 DeKalb County Grand Jury*, 265 Ga. App. 870, 871 (2004)

²²² *Id.*; *In re: Floyd Co. Grand Jury Presentments for May Term 1996*, 225 Ga. App. at 709 - 710; *Thompson v. Macon-Bibb Co. Hospital Auth.*, 246 Ga. at 788.

²²³ *In re July-August, 2003 DeKalb County Grand Jury*, 265 Ga. App. 870, 871 (2004).

²²⁴ The specific duties are contained in O.C.G.A. §§ 21-2-327 and 21-2-500. Section 21-2-327 deals with the inspection of a specific type of voting machine which are defined in O.C.G.A. § 21-2-2(40) as “a mechanical device on which an elector may cast a vote and which tabulates those votes by its own devices and is also known as a ‘lever machine.’” The use of this type of equipment is now restricted to municipalities. O.C.G.A. § 21-2-320.

O.C.G.A. § 21-2-500 requires the superintendent of elections in each county to assemble the records of an election after the election is over and secure them for presentation “to the grand jury for inspection at its next meeting” that is held 24 months after the date of the election. The statute does not specify what the grand jury is supposed to do during the inspection other than make sure that the specified materials from the election have been maintained as required by law. At the end of the term of the Grand Jury, these records can be destroyed.

²²⁵ O.C.G.A. § 15-12-67.

²²⁶ O.C.G.A. § 48-5-311.

²²⁷ O.C.G.A. § 21-2-211.

²²⁸ Although the issue has not been addressed by the Appellate Courts, it appears that any nomination or election requires a majority vote of the Grand Jury. O.C.G.A. § 1-3-1(d)(5).

²²⁹ O.C.G.A. § 15-12-81; *Everetteze v. Clark*, 286 Ga. 11, 13-14 (2009).

²³⁰ O.C.G.A. § 15-12-7.

²³¹ O.C.G.A. § 15-12-7(a)(2).

²³² O.C.G.A. § 15-12-7(a)(1).

²³³ O.C.G.A. § 15-12-7(b); *Carroll v. Ragsdale*, 192 Ga. 118 (1941).

²³⁴ O.C.G.A. § 15-12-9.

²³⁵ O.C.G.A. §§ 36-3-2, 36-3-20.

²³⁶ O.C.G.A. §§ 36-16-1 through 36-16-5.

²³⁷ See e.g.: Ga. L. 1978, p. 2345, *continued by* Ga. L. 1986, p. 4150 (Monroe County, Grand Jury arbitration powers); Ga. L. 1978, p. 2405, *continued by* Ga. L. 1987, p. 4829 (Pike County, tax returns to board of state assessors); Ga. L. 1982, p. 2563, *continued by* Ga. L. 1986, p. 3679 (Ware County, county manager); Ga. L. 1973, p. 3320 (Gordon County, Compensation of County Officers, reviewed by Grand Jury); Ga. L. 1974, p. 2805 (Grand Jury special charges); Ga. L. 1969, p. 2725 (Wayne County, hospital authority vacancies).

²³⁸ *Howard v. State*, 60 Ga. App. 229, 235 (1939) This custom has been traced back to English Grand Juries during the Seventeenth Century, Beale & Bryson, Ch. 3; Halisbury, JURIES § 593, and the custom was followed by colonial grand juries prior to the American Revolution. Stokes, at 343, Davis, THE FLEDGLING PROVINCE, 80 - 81 (1976).

²³⁹ *Howard v. State*, 60 Ga. App. at 235.

²⁴⁰ Because there is disagreement among the District Attorneys about the number of votes that are required in order for the Grand Jury to return a report or General Presentment, the Handbook does not address the issue. O.C.G.A. § 1-3-1(d)(5) provides that “A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.” However, O.C.G.A. § 15-12-61(a), it is provided that: “The votes of *at least 12* grand jurors shall be necessary to find a bill of indictment or *to make a presentment*.” (Emphasis added) Although the General Assembly could have limited this to special presentments as they did in other Code section, it did not do so, thus giving rise to the inference that it applies to both special and general presentments. However, the Georgia appellate courts have never had to decide whether this sentence also applies to *general presentments* as well. At a minimum, it would appear that a majority of the Grand Jurors must approve the General Presentments. See e.g. *McClure v. Shirley*, 227 Ga. 832 (1971).

²⁴¹ *City of Kennesaw v. Ravan*, 245 Ga. 226 (1980); Ga. Op. Att’y Gen. U73-109.

²⁴² O.C.G.A. § 15-12-80.

²⁴³ *In re: Floyd Co. Grand Jury Presentments for May Term 1996*, 225 Ga. App. at 707.

²⁴⁴ *In re Laurens County April-June 2001 & July-September 2001 Grand Jury*, 267 Ga. App. 204, 209 (2004).

²⁴⁵ *Kelly v. Tanksley*, 105 Ga. App. 65, 66 (1961); *Thompson v. Macon Bibb Co. Hospital Auth.*, 246 Ga. at 778. For cases deciding who are identifiable persons, see: *In re Presentment of Grand Jury*, R.M. Charlton 149, 1 Ga. Rep. Ann. 170 (Chatham Co. Super. Ct. 1822); *Application of Electrical, Radio & Machine Workers of America*, 111 F.Supp. 858 (S.D.N.Y. 1953); *Ex Parte Chauvin*, T.U.P. Charlton 14, 1 Ga. Rep. Ann. 8 (Chatham Co. Super. Ct. 1805); *Brazel v. Wells*, 159 Ga. App. 763 (1981); *Harris v. Edmonds*, 119 Ga. App. 305 (1967); *In re Hensley*, 184 Ga. App. 625 (1987).

²⁴⁶ *Thompson v. Macon Bibb Co. Hospital Auth.*, 246 Ga. at 778.

²⁴⁷ *Kelly v. Tanksley*, 105 Ga. App. 65, 66 (1961); *In re Gwinnett County Grand Jury Proceedings*, 180 Ga. App. 241, 242 (1986).

²⁴⁸ *In re Gwinnett County Grand Jury Proceedings*, 180 Ga. App. 241, 242 (1986). When confronted by a Grand Jury that is adamant about making a full report of their finding, the District Attorney might want to recommend that the Grand Jury return a sealed report to the court along with a request that the court forward it the appropriate person having supervisory authority over the area of concern. Although there are no Georgia cases on point, cases from

other jurisdictions support such an approach. See *In re Report and Recommendation of June 5, 1992 Grand Jury*, 370 F. Supp. 1219 (D.D.C., 1974); *In re Present of Special Grand Jury*, 315 F. Supp. 662 (D. Md. 1970).

²⁴⁹ *In re July-August, 2003 DeKalb County Grand Jury*, 265 Ga. App. 870, 874; *In re: Floyd Co. Grand Jury Presentments for May Term 1996*, 225 Ga. App. at 707; Beale & Bryson, Ch. 3, p. 3, fn. 12.

²⁵⁰ *Kelly v. Tanksley*, 105 Ga. App. at 66; *Thompson v. Macon-Bibb Co. Hospital Auth.*, 246 Ga. at 778; *In re: Floyd Co. Grand Jury Presentments for May Term 1996*, supra.

²⁵¹ See Ga. S.Ct. Comm'n of Racial and Ethnic Bias in the Court System, LET JUSTICE BE DONE: EQUALLY, FAIRLY AND IMPARTIALLY, 15, 48 (1995).