

TASK FORCE TO EXAMINE IMPROVEMENTS TO THE OHIO GRAND JURY SYSTEM

Minutes of the May 6, 2016, Meeting

Members present: Judge Stephen McIntosh (Chair), Daniel Lutz (Vice Chair), Senator Kevin Bacon, Senator Edna Brown (via telephone), Judge Joyce Campbell, Representative Robert Cupp, Judge Michelle Earley, Judge William Finnegan, Judge Steven Gall, Professor Mark Godsey, Judge Michael Goulding (via telephone), Chief Eliot Isaac, Janet Jackson, Professor Ric Simmons, Roger Synenberg, and Judge Stephen Wolaver

Members absent: Judge Melissa Powers and Representative Fred Strahorn

Others present: Administrative Director Michael Buenger, Jesse Mosser, Michael Farley, Andrea Kulikowski, and John VanNorman of the Supreme Court

- I. **Call to Order.** Judge McIntosh called the Task Force meeting to order at 10:09 a.m.
- II. **Approval of Minutes.** Minutes of the April 1, 2016, meeting were unanimously approved.
- III. **Draft Report / Workgroups Updates.** The members were provided a draft copy of the Task Force's Final Report and Recommendation based upon the initial proposed recommendations of the Task Force's five workgroups. Reviewing the draft report, the member discussed the following workgroup recommendations:
 1. **Role of Judiciary / Prosecution.** Workgroup chairs Judge Stephen Wolaver and Daniel Lutz noted the workgroup has discussed the need to improve grand jury instructions, which would help promote the independence of the grand jury. To this end, workgroup has proposed a draft set of amendments to the Ohio Jury Instructions that would do the following:
 - State that the grand jury foreman has the ability to request advice from the court at any time;
 - Inform grand jurors that they may ask the prosecuting attorney to step outside the grand jury room so that the grand jury may ask questions of the witness without the prosecuting attorney present. This recommendation would be dependent upon statutory and rule amendments permitting the grand jury to so request.
 - Include a section emphasizing that grand jurors are the "sole judges of the facts."

Reviewing the workgroup's proposal, members discussed the need to address the issue of grand jury members asking inappropriate questions in the prosecutor's absence and the scope of questions that could be asked in the prosecutor's absence. The workgroup will look at amending the proposal to establish parameters of questions that may be asked and allowing the prosecutor to review questions asked in the prosecutor's absence.

2. Grand Jury Secrecy. Workgroup chair Judge Michelle Earley explained the workgroup's conclusion that secrecy of grand jury proceedings should be loosened. To this end, the workgroup has proposed the following amendments to Crim.R. 6:

- Restructuring of the rule to increase clarity and reader comprehension;
- Address the record of grand jury proceedings, including who has responsibility for creating and maintaining the record, as well as what is to be included in the record;
- Provide that the record of the proceedings be filed with the clerk of the court, but have a presumption of secrecy;
- Allow the public to submit a written request for access to the records of the record of the proceedings;
- Require the court to conduct a balancing test to determine if the presumption of secrecy is outweighed by other factors, including public interest in disclosure.

Discussing the workgroup's proposal, members suggested that the proposed language be revised to allow for local variations in how grand jury records are produced and filed with the clerk. Other areas of discussion and concern were the requirements for a request to release a grand jury record (i.e., what must the requestor show?), the factors to be considered when the court is reviewing a request to release the grand jury record, and the proposal that the prosecutor be responsible for redacting information. The workgroup will continue revising the proposal to address concerns.

3. Public Education. Workgroup chair Janet Jackson noted the workgroup has found there to be generally no public understanding of the grand jury system, which undermines public confidence in the system. To address this, the workgroup has proposed the creation of educational materials, including a video that can be used by the courts and other government entities, such in jury selection rooms. With the assistance of the Supreme Court's Public Information Office, the workgroup has prepared a proposed script for the video, which the workgroup continues to refine. The workgroup has also proposed that the Supreme Court work with other justice partners to create new outreach and educational opportunities.

4. **Rule and Statute Review / Reconciliation.** Workgroup chair Representative Cupp explained that the workgroup has identified various instances in which the provisions of Crim.R. 6 and R.C. Chapter 2939 should be harmonized, particularly those concerning grand jury composition and organization. In each of these instances, the workgroup believes it is R.C. Chapter 2939 that should be amended in recognition that the grand jury process is, in practice, an extension of the judicial process and not an executive function. The recommended harmonization amendments to R.C. Chapter 2939 include the following topics:

- The role of the foreman;
- The processing of alternate jurors;
- The procedure in Crim.R. 6 requiring that seven of the nine jurors are required for an indictment;
- The number of members of a grand jury

5. **Police Lethal Use of Force.** Workgroup chair Judge McIntosh explained that the workgroup has reviewed the various methods by which police use of lethal force grand juries have been handled in Ohio as well as different approaches currently used in or being proposed by other states. Based upon this review, the workgroup is recommending that the Ohio Attorney General's Office have exclusive authority to investigate and prosecute police lethal use of force cases through its Special Prosecutions Section and the Bureau of Criminal Investigation.

Judge McIntosh noted a recent meeting with the Attorney General's Office to discuss the proposal. The Attorney General's Office noted some logistical concerns, but indicated that they would comply with any revisions that are implemented.

IV. **ACLU of Ohio Letter.** Judge McIntosh provided the members with a May 6, 2016, letter submitted by the American Civil Liberties Union (ACLU) of Ohio. Judge McIntosh explained that the ACLU of Ohio is proposing a series of recommendations and asked subcommittees to review and discuss each recommendation this is relevant to that workgroup.

V. **Adjournment.** There being no further business to come before the full Task Force, the Task Force adjourned at 11:48 a.m. to allow workgroups to meet until 2:00 p.m.