

SAC Rules of Criminal Procedure

Recommended Changes to Mass. R. Crim. P. 5

[Current Mass. R. Crim. P. 5]

Rule 5: The Grand Jury

(a) Summoning Grand Juries. As prescribed by law, the appropriate number of jurors shall be summoned in the manner and at the time required, from among whom the court shall select not more than twenty-three grand jurors to serve in said court as long as and at those specific times required by law, or as required by the court. The regular grand jury shall be called upon and directed to sit by the Chief Justice of the Superior Court Department whenever within his or her discretion the conduct of regular criminal business and timely prosecution within a particular county so dictate. Notwithstanding the foregoing, special grand juries shall be summoned in the manner prescribed by the General Laws.

(b) Foreperson, Foreperson Pro Tem, Clerk, Clerk Pro Tem. After the grand jurors have been impanelled they shall retire and elect one of their number as foreperson. The foreperson and the prosecuting attorney shall have the power to administer oaths and affirmations to witnesses who appear to testify before the grand jury, and the foreperson shall, under his or her hand, return to the court a list of all witnesses sworn before the grand jury during the sitting. If the foreperson is unable to serve for any part of the period the grand jurors are required to serve, a foreperson pro tem shall be elected in the same manner as provided herein for election of the foreperson. The foreperson pro tem shall serve until the foreperson returns or for the remainder of the term if the foreperson is unable to return. The grand jury may also appoint one of their number as clerk to be charged with keeping a record of their proceedings, and, if the grand jury so directs, to deliver such record to the attorney general or district attorney. If the clerk is unable to serve for any part of the period the grand jurors are required to serve, a clerk pro tem may be appointed.

(c) Who May be Present. Attorneys for the Commonwealth who are necessary or convenient to the presentation of the evidence, the witness under examination, the attorney for the witness, and such other persons who are necessary or convenient to the presentation of the evidence may be present while the grand jury is in session. The attorney for the witness shall make no objections or arguments or otherwise address the grand jury or the prosecuting attorney. No witness may refuse to appear because of unavailability of counsel for that witness.

(d) Secrecy of Proceedings and Disclosures. The judge may direct that an indictment be kept secret until after arrest. In such an instance, the clerk shall seal the indictment and no person may disclose the finding of the indictment except as is necessary for the issuance and execution of a warrant. A person performing an official function in relation to the grand jury may not disclose matters occurring before the grand jury except in the performance of his or her official duties or

when specifically directed to do so by the court. No obligation of secrecy may be imposed upon any person except in accordance with law.

(e) Finding and Return of Indictment. An indictment may be found only upon the concurrence of twelve or more jurors. The indictment shall be returned by the grand jury to a judge in open court.

(f) No bill; Discharge of Defendant. The grand jury shall during its session make a daily return to the court of all cases as to which it has determined not to present an indictment against an accused. Each such complaint shall be endorsed “no bill” and shall be filed with the court. If upon the filing of a no bill the accused is held on process, he or she shall be discharged unless held on other process.

(g) Deliberation. The prosecuting attorney shall not be present during deliberation and voting except at the request of the grand jury.

(h) Discharge. A grand jury shall serve until the first sitting of the next authorized grand jury unless it is discharged sooner by the court or unless its service is extended to complete an investigation then in progress.

[Proposed amendments to Mass. R. Crim. P. 5 redline version]

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(a) Summoning Grand Juries.

(1) Selection of Grand Jurors. As prescribed by law, the appropriate number of jurors shall be summoned in the manner and at the time required, from among whom the court shall select not more than twenty-three grand jurors and may select up to four alternate grand jurors to serve in said court as long as and at those specific times required by law, or as required by the court. In the exercise of discretion, a judge may replace a sitting grand juror with an alternate grand juror upon a finding of hardship, inconvenience, public necessity, or other good cause shown. When the public interest so requires, a judge may impanel a second grand jury and both shall be subject to the same laws, rules, and requirements.

(2) Place and Time of Sitting. The regular grand jury shall be called upon and directed to sit by the Chief Justice of the Superior Court Department whenever and wherever within ~~his or her~~ the Chief Justice's discretion the conduct of regular criminal business and timely prosecution within a particular county so dictate. Notwithstanding the foregoing, special grand juries shall be summoned in the manner prescribed by the General Laws.

(b) Foreperson, Foreperson Pro Tem, Clerk, Clerk Pro Tem.

(1) Election of Foreperson and Clerk. After the regular grand jurors have been impanelled they shall retire and elect one of their number as foreperson and one of their number as clerk. The foreperson and the prosecuting attorney shall have the power to administer oaths

and affirmations to witnesses who appear to testify before the grand jury, and the foreperson shall, under ~~his or her~~ the foreperson's hand, return to the court a list of all witnesses sworn before the grand jury during the sitting.

(2) Election of Foreperson Pro Tem. If the foreperson is unable to serve for any part of the period the grand jurors are required to serve, a foreperson pro tem shall be elected in the same manner as provided herein for election of the foreperson. The foreperson pro tem shall serve until the foreperson returns or for the remainder of the term if the foreperson is unable to return.

(3) Clerk. The ~~grand jury may also appoint one of their number as~~ clerk ~~to~~ shall be charged with keeping a record of their proceedings, and, if the grand jury so directs, to deliver such record to the attorney general or district attorney. If the clerk is unable to serve for any part of the period the grand jurors are required to serve, a clerk pro tem ~~may~~ shall be ~~appointed~~ elected.

(c) Who May be Present. Attorneys for the Commonwealth who are necessary or convenient to the presentation of the evidence, the witness under examination, the attorney for the witness, and such other persons who are necessary or convenient to the presentation of the evidence may be present while the grand jury is in session. The attorney for the witness shall make no objections or arguments or otherwise address the grand jury or the prosecuting attorney. No witness may refuse to appear because of unavailability of counsel for that witness.

(d) Secrecy of Proceedings and Disclosures. The judge may direct that an indictment be kept secret until after arrest. In such an instance, the clerk shall seal the indictment and no person may disclose the finding of the indictment except as is necessary for the issuance and execution of a warrant. A person performing an official function in relation to the grand jury may not disclose matters occurring before the grand jury except in the performance of ~~his or her~~ official duties or when specifically directed to do so by the court. No obligation of secrecy may be imposed upon any person except in accordance with law.

(e) Quorum, Finding, and Return of Indictment. A quorum of thirteen grand jurors must be present to hear any evidence, consider any proposed indictment, or take any other official action. An indictment may be found only upon the concurrence of twelve or more jurors. The indictment shall be returned by the grand jury to a judge in open court unless for reasons of public safety or security the judge decides to take the return of the indictment remotely.

(f) No Bill; Discharge of Defendant. The grand jury shall during its session make a daily return to the court of all cases as to which it has determined not to present an indictment against an accused. Each such complaint shall be endorsed "no bill" and shall be filed with the court. If upon the filing of a no bill the accused is held on process, ~~he or she~~ that person shall be discharged unless held on other process.

(g) Deliberation. ~~The prosecuting attorney~~ A prosecutor shall not be present during deliberation and voting except at the request of the grand jury. If a prosecutor is present during deliberation and voting, the prosecutor shall be permitted to answer only questions of law.

(h) Discharge. A grand jury shall serve until the first sitting of the next authorized grand jury unless it is discharged sooner by the court or unless its service is extended to complete an investigation then in progress.

(i) The Record of Proceedings. All grand jury proceedings, except the grand jury's own deliberations, shall be recorded in a manner that permits reproduction and transcription. This shall include, but not be limited to, impanelment, removal of any grand juror, legal instructions provided to the grand jury by a judge or a prosecutor in connection with the proceeding, questions to a prosecutor from a grand juror and the prosecutor's responses, before or during deliberations, and a record of all those present during the proceedings, excluding the names of the grand jurors.

[Proposed amendments to Mass. R. Crim. P. 5 clean version]

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