

GRAND JURY
STATE SUMMARIES

ALABAMA

- Grand jury used
- Preliminary hearings used
- Grand jury is not recorded
 - No recording requirement

DESCRIPTION

In Alabama, both grand jury and preliminary hearings are used. Alabama law does not require that grand jury proceedings be recorded. Some prosecutor's offices chose to have a stenographer present. When grand jury is recorded, there is no requirement that the transcripts be disseminated.

ALASKA

- Grand jury used
- Grand jury recorded
- Transcript disclosed
- Testimony presented by police officers and civilian witnesses
 - Alaska has a procedure to hold a secret grand jury

DESCRIPTION

In Alaska, all felonies are taken to grand jury unless the defendant waives grand jury. The proceedings are recorded by the court using For the Record (FTR) software. The entire proceeding, except deliberation, is recorded. The party requesting the transcript will have the recording transcribed. The State is obligated to turn over the entire transcript. Transcripts of the grand jury proceeding are confidential and are not subject to public records requests. If there is no indictment then the recording is not disclosed and is held by the court under seal.

ARIZONA

- Grand jury used
- Preliminary hearings used
- Grand jury recorded
- Transcript disclosed
 - Defense must request
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

In Arizona, both grand jury and preliminary hearings may be used. The majority of cases are taken to grand jury. All proceedings before the grand jury, except deliberations, are recorded by a court reporter. Ariz R Crim P 12.8(a). The defense must request a copy of the transcript and upon request, the court provides a copy. Generally, one police officer presents all of the evidence for an entire case.

ARKANSAS

- Grand jury not used
- Preliminary hearings used

DESCRIPTION

Grand jury is not used in Arkansas. Felony cases are charged by information and taken to a preliminary hearing. A Pulaski County Deputy Prosecuting Attorney recalls only two grand juries in his 25 year career. Both of those grand juries were empaneled to investigate government officials. In those rare cases, the grand jury proceedings were recorded.

CALIFORNIA

- Grand jury used
- Preliminary hearings used
- Grand jury recorded
- Transcript disclosed
 - Public record unless the defense requests otherwise
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

Grand jury and preliminary hearings are used in California. California law requires that grand jury proceedings be recorded and transcribed. Cal Pen Code 938 (a)-(b). At the conclusion of grand jury testimony, the court reporter has two weeks to produce a transcript of the proceeding to be filed with the court. Upon filing the transcript with the court, the transcript becomes public record. Cal Pen Code § 938.1(a). The defense has 10 days to file a motion to request that the transcript be sealed. Cal Pen Code § 938.1(b). If no charges are filed, however, the transcript will not be public record.

COLORADO

- Grand jury rarely used
- Preliminary hearings used
- Grand jury recorded
- Transcript disclosed
 - Testifying witnesses: State discovers testimony
 - Entire transcript: disclosure not required
 - Defense can move the court to review the grand jury transcript for prosecutorial misconduct. Court then reviews the transcript *in camera*.
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

In Colorado, not all felonies are taken to grand jury. Grand jury is used for complicated cases such as financial crimes, gang cases, and cases needing secrecy and the ability to subpoena uncooperative witnesses. Preliminary hearings are used for all cases filed on a complaint or information. Grand jury proceedings are recorded by a court reporter and transcribed. The State is obliged to turn over the testimony of testifying witnesses. The Defense may file a motion for the court to review the grand jury transcript for prosecutorial misconduct. The court will then review the transcript *in camera* to determine if the entire transcript should be released. Defendants must review the transcript with counsel. Defendants are not given their own copies. If there is no indictment, the transcripts are not disclosed.

CONNECTICUT

- Grand jury not used
- Preliminary hearings used

DESCRIPTION

While Connecticut statutes provide that grand jury shall be recorded, grand jury is not used in Connecticut. Grand jury has not been used in Connecticut since 1983. In Connecticut, cases are initiated by police officers. Officers present warrants to judges and if the warrant is signed, the defendant is arrested. The court then generates the initial charging instrument. The State's Attorney will create a finalized charging instrument that will be used during negotiations and in trial.

DELAWARE

- Grand jury used
- Preliminary hearings not used
- Grand jury not recorded
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

Grand jury and preliminary hearings are used in Delaware. Felony cases are first sent to a preliminary hearing. If probable cause is found, the case is set for grand jury. Grand jury proceedings are not recorded. Delaware law provides that grand jury proceedings may be recorded, but only with court approval. Del Super Ct Crim R 6(e)(1). Testimony in each case is presented by a single police officer.

FLORIDA

- Grand jury rarely used
- Preliminary hearings not used
- Grand jury is recorded
 - Transcripts or recordings rarely disclosed, and only pursuant to court order

DESCRIPTION

In Florida, the majority of cases are filed by information only. An estimated 98% of cases are indicted by information, with the remaining 2% of cases indicted by a grand jury proceeding. Examples of cases typically presented to a grand jury for indictment include: homicide, police shooting, or public corruption. The proceedings are secret. A recording or transcript is only disclosed by order of the court. Fla Stat 905.27 (2014).

GEORGIA

- Grand jury is used
- Preliminary hearings used
- Grand jury not recorded
 - Not required but may record in some situations
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

In Georgia, both grand jury and preliminary hearings are used. By statute, some lower-level felonies may be issued by information. In those cases, a preliminary hearing is held. All other felonies are taken to grand jury. Recordation requirements are based on the size of the county. A stenographer is authorized to be present during grand jury proceedings in counties with a population of 150,000 or more. In counties with a population of 200,000 or more a recording device can be used in lieu of a stenographer. OCGA 15-12-83. In smaller counties, even if a District Attorney's office wants to record grand jury, they are not permitted to do so by statute.

HAWAII

- Grand jury rarely used
- Preliminary hearings used
- Grand jury recorded
- Transcript or recording disclosed
 - Disclosure occurs through normal discovery process

DESCRIPTION

In Hawaii, indictments are most commonly obtained through preliminary hearings or through filing an information of felony. When used, grand jury is recorded by a court reporter, and the recording or transcript is always turned over as part of discovery. Haw R Penal P Rule 6 (2015). In grand jury, a prosecutor presents evidence but a lawyer is separately appointed to advise the grand jury on legal issues that may arise.

IDAHO

- Grand jury used
- Preliminary hearings used
- Grand jury recorded
- Transcript disclosed
 - Defense requests a copy of the transcript and transcript is disclosed
 - Court limits use
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

In Idaho, felony cases can be taken to grand jury or preliminary hearings. Generally, cases are taken to preliminary hearings. Cases with “vulnerable victims” are taken to grand jury. These cases include sex crimes, crimes against children, drug crimes involving confidential informants or undercover officers, white-collar crime, and death penalty cases.

ILLINOIS

- Grand jury used
- Preliminary hearings used
- Grand jury recorded
- Transcript disclosed
 - Transcript provided at arraignment
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

Grand jury and preliminary hearings are used in Illinois. Violent cases are often taken to grand jury while non-violent cases are taken to preliminary hearings. Illinois statutes require that grand jury testimony be recorded and transcribed. 725 ILCS 5/112-7. All grand jury proceedings are recorded by a court report, except deliberations. A copy of the transcribed testimony is provided to defense counsel at arraignment. Testimony in each case is generally presented by a single police officer.

INDIANA

- Grand jury used
- Preliminary hearings not used
- Grand jury recorded
- Transcript disclosed
 - Transcript provided with protective order
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

Nearly all felony cases in Indiana are filed by Information. Grand jury is used in certain types of cases, such as officer-involved shootings and white-collar crime. Evidence may be presented by a law enforcement case agent only, but civilian witnesses regularly testify. When grand jury is used, it is recorded. A transcription is provided to the defense but protective orders are used to limit the use and dissemination of the transcript.

IOWA

- Grand jury rarely used
- Preliminary hearings used
- Grand jury recorded
- Transcript disclosed
 - Transcript provided at arraignment
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

Grand jury and preliminary hearings are used in Iowa. Generally, only sensitive cases are sent to grand jury. Sensitive cases include rape cases, vehicular homicides, and officer-involved shootings. The majority of cases are filed by Information and taken to preliminary hearings. When grand jury is used, testimony is recorded electronically. Testimony is transcribed when the indictment is filed and the transcript is provided to defense counsel at arraignment.

KANSAS

- Grand jury rarely used
- Preliminary hearings used
- When used, grand jury recorded

DESCRIPTION

Nearly all felony cases in Kansas are filed by complaint and taken to a preliminary hearing. In Kansas, grand jury is a citizen-driven investigative tool. Citizens may petition to empanel a grand jury. In order to do so, the same percentage of citizens who voted in the last presidential election must agree to empanel the grand jury. The citizen grand jury can request that a District Attorney be present and the District Attorney has a right to be present for the presentation of evidence. These grand juries are recorded.

KENTUCKY

- Grand jury used
- Preliminary hearing may be used
- Grand jury recorded
- Transcript disclosed
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

In Kentucky, felony cases are taken to a grand jury and the proceedings are recorded. Recordings are retained by attorney for the Commonwealth. Ky R Cr Rule 5.16(1). Failure to have a record made is grounds for dismissal of the indictment, unless the Commonwealth can show good cause for the failure to record. In practice, all testimony is presented by a single law enforcement officer responsible for presenting the case to the grand jurors. By statute, only testimony is recorded, and it may be preserved by either audio recording or through a stenographer. Ky R Cr Rule 5.16(3). Defendants can obtain the transcript or a copy of the recording of the grand jury by requesting it from the Commonwealth Attorney's Office.

LOUISIANA

- Grand jury rarely used
- Preliminary hearings not used
- Grand jury not recorded
 - May record only with permission of the court
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

In Louisiana, approximately 99% of indictments are obtained when the prosecutor files a bill of information with the court. Grand jury is typically only used in cases which could result in the death penalty or life imprisonment, including homicide and aggravated rape. Records of the grand jury proceeding are not discoverable unless they contain information favorable to the defendant.

MAINE

- Grand jury used
- Preliminary hearings not used
- Grand jury only recorded in rare circumstances
- Transcript disclosed when ordered by court
 - Moving party must show particularized need for transcript; in the alternative, judge has discretion to release transcript
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

Grand jury is used in most felony cases in Maine. Grand jury is only recorded when the court finds that the defendant or the State's attorney has shown good cause for the proceeding to be recorded. Me R Crim P 6. This recording is not disclosed unless the court finds that the State or the defense have shown a particularized need for the transcript. Evidence is generally presented by a single police officer.

MARYLAND

- Grand jury used
- Preliminary hearings not used
- Grand jury recorded
 - Recording only disclosed upon court order
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

In Maryland, all felonies are presented to grand jury unless the defendant waives indictment. All grand jury proceedings are recorded by a court reporter. The State retains the recording or transcript and cannot disclose without court order. Md Courts and Judicial Proceedings Code Ann 8-416(c)(2). If the defense moves for a copy of the transcript, the court will order a copy prepared at the defense's expense. No showing is required for the defense to obtain a copy. The transcript is not released until the grand jury witness testifies at trial. Typically, the sole witness at grand jury is a single officer who reads the reports at grand jury and this officer is not involved in the case investigation.

MASSACHUSETTS

- Grand jury used
- Preliminary hearings not used
- Grand jury recorded
 - Disclosed automatically
 - State can petition for protective order prohibiting distribution of transcript
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

In Massachusetts, all grand jury proceedings are recorded, automatically transcribed, and discovered as part of the normal discovery process. Initially, defense counsel formally requested discovery of the transcript, but it has evolved into an automatic part of discovery. Massachusetts law provides that the State may request a protective order prohibiting defense counsel from disclosing the transcripts in violent cases when a showing is made that the defendant poses a threat to a witness or victim. ALM GL ch 277, 1(d). In grand jury, the rules of evidence do not apply. ALM G Evid 1101. In practice, all major witnesses testify, but procedures have developed to protect vulnerable victims, including child victims. Live testimony of child witnesses is often replaced with testimony previously recorded in a Child Advocacy Center run by the District Attorney's Office and the Sexual Assault Intervention Network.

MICHIGAN

- Does not use grand jury
- Preliminary hearings used

DESCRIPTION

Michigan law allows for grand jury proceedings, but only if the state petitions the court to convene a grand jury and a judge allows it. In practice, all indictments are obtained by preliminary examination, a recorded proceeding held in open court. Witnesses are subject to cross-examination, and their sworn statements are admissible in future proceedings.

MINNESOTA

- Grand jury rarely used
 - Grand jury required only for homicide cases and cases that carry a penalty of life imprisonment
- Preliminary hearings not used
- Grand jury recorded
- Transcript disclosed

DESCRIPTION

In Minnesota, most indictments are obtained when the prosecuting attorney files a complaint, containing a sworn affidavit by the police officer. Grand jury is only required for a limited range of cases, including homicide cases and cases that carry a penalty of life imprisonment. Otherwise grand jury is used at the prosecutor's discretion. For example, cases involving police officer use of force which results in death, or misconduct by a public official are frequently presented to the grand jury.

MISSISSIPPI

- Grand jury used
- Preliminary hearings not used
- Grand jury recorded
- Case agent state
 - Evidence most commonly presented by law enforcement. Civilian witnesses occasionally testify

DESCRIPTION

In Mississippi, all felony cases must be indicted by the grand jury. Mississippi law provides that a court reporter shall record all grand jury proceedings either stenographically or by use of an electronic recording device. Miss Code Ann 13-7-25 (2014). In practice, the proceedings are not always recorded. Grand jurors may take notes, which are sealed for six months and then either released to the former juror or destroyed. The notes are not otherwise disclosed.

MISSOURI

- Grand jury rarely used
- Preliminary hearings used
- Grand jury recorded
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

The majority of felony cases in Missouri are taken to a preliminary hearing. Grand jury is rarely used. When grand jury is used, it is recorded and the transcript is disclosed. Hearsay is admissible and evidence is generally presented by law enforcement only. Depositions are also available in criminal cases in Missouri.

MONTANA

- Grand jury rarely used
- Preliminary hearings not used
- Grand jury recorded
- Transcript may be disclosed
 - Only if ordered or permitted by the court

DESCRIPTION

In Montana, most prosecutions commence when a prosecutor requests leave of the court to file an information of felony. MCA 46-11-101(3). That leave is routinely granted. A prosecutor may choose to use grand jury as an investigative tool, but in practice this rarely occurs. Statute provides that grand jury shall be preserved by either stenographer or a recording device. The recording or transcript shall be filed with the court within 30 days, and the transcript can be released to the prosecution automatically. MCA 46-11-316. The court may release the recording or transcript to the defense under certain enumerated circumstances. MCA 46-11-317.

NEBRASKA

- Grand jury rarely used
 - Only used for in-custody death investigations
- Preliminary hearings used
- Grand jury recorded
- Transcripts not disclosed
 - Records are sealed and filed with the court; released upon court order

DESCRIPTION

In Nebraska, felony prosecution rarely commences with grand jury. The majority of cases are indicted by preliminary hearing. Under Nebraska law, district courts are vested with the power to call grand juries, and there are specific provisions for grand jury investigations of death in custody or while being apprehended by law enforcement. RRS Neb 27-1101, RRS Neb 29-1401. When grand jury is used, a court reporter is present and transcriptions are retained by the court under seal.

NEVADA

- Grand jury used
- Preliminary hearings used
- Grand jury recorded
- Transcript disclosed
 - Filed with court within 10 days, and thereafter are public record if not sealed
- Case agent state
 - Evidence most commonly presented by law enforcement. Civilian witnesses occasionally testify

DESCRIPTION

In Nevada, grand jury is commonly used. Preliminary hearings can be utilized, but the grand jury is used in the majority of cases. The “case agent” system is the primary form of presentation of the evidence, in which one law enforcement officer presents the evidence, but civilian witnesses are also frequently called to testify. All proceedings are recorded, and the transcript must be filed with the court within 10 days of the proceeding. Nev Rev Stat Ann 172.225. Transcripts are immediately public record unless sealed by court order.

NEW HAMPSHIRE

- Grand jury used
- Preliminary hearings not used
- Grand jury recorded in rare circumstances
 - If grand jury is recorded, it is sealed by the judge. The state must petition the court to use the transcript or recording in trial. If the petition is granted, the material becomes discoverable, but is not disclosed until trial
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

Grand jury is used in all felony criminal cases unless the defendant waives indictment. Generally, a case agent system is used and testimony is presented by law enforcement only. Some counties use the primary officer in the case as the case agent; other counties have designated officers who act as case agents for all cases. Grand jury is recorded if civilian witnesses are testifying, and when the grand jury proceeding is part of an ongoing criminal investigation. Statute allows the grand jury proceeding to be recorded and/or transcribed upon the motion of the court or the Attorney General. NH Sup Ct Rule 52 (2015). The recording is sealed by the judge, and the state must petition the court to use the material in trial. If that petition is granted, the transcript is also provided to the defense. Statute provides that “[w]here any record of grand jury proceedings is authorized, the Justice authorizing the records shall make every effort to recognize and protect the rights and physical well-being of witnesses who testify before the grand jury, by issuing protective orders where necessary to prevent harm to a witness by the disclosure of his testimony.” NH Sup Ct Rule 52 (3)(2015).

NEW JERSEY

- Grand jury used
- Preliminary hearings not used
- Grand jury recorded
- Transcript disclosed
 - Released upon defendant's request
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

In New Jersey, all grand jury proceedings are audio recorded and stored in the court's computer system. NJ Court Rules R 3:6-6. The state may move for a protective order, which could deny discovery of the transcript based on safety concerns and other factors. NJ Court Rules R 3:13-3(e). Typically, only one police officer presents evidence on each case. When a defendant requests a copy of the proceeding it is released. The cost of transcription is paid by the defense.

NEW MEXICO

- Grand jury used
- Preliminary hearings used
- Grand jury recorded
- Transcript or recording is disclosed
 - Defendant must file request with the court; routinely granted
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

In New Mexico, the prosecutor can choose whether to indict by grand jury or preliminary hearing. Recordation of the proceeding is required, and defense counsel routinely obtains the transcript or recording. It could be considered malpractice if that evidence is not obtained. Court staff are in charge of recordation. The rules of evidence do not apply to grand jury, however New Mexico case law discourages presenting an entire case by hearsay alone, and victims usually testify.

NEW YORK

- Grand jury used
- Grand jury recorded
- Transcript disclosed
 - Testifying witnesses: State turns over testimony
 - Entire transcript: disclosure not required
 - Defense may file a motion to challenge the sufficiency of the grand jury proceedings. Court then reviews transcript *in camera*.
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

In New York, all felony cases are taken to grand jury. The proceedings are recorded by a court reporter and transcribed. The State is obligated to turn over the testimony of testifying witnesses. The Defense may file a motion to challenge the sufficiency of the grand jury proceeding. The court will then review the transcript *in camera* to determine whether the entire transcript should be released. NY CLS CPL 210.30, NY CLS CPL 210.35.

Child witnesses and “special witnesses” may have their testimony presented through a previously recorded interview. NY CLS CPL 190.30(4). The interview is conducted by a professional, as defined by statute. A “special witness” is an individual who is physically ill or incapacitated or someone “who is likely to suffer severe emotional or mental stress if required to testify in person.” NY CLS CPL 190.32(1)(b). The District Attorney must make an *ex parte* application to the court for an order authorizing the videotaping of a “special witness” to substitute live testimony in the grand jury. NY CLS CPL 190.32(3).

NORTH CAROLINA

- Grand jury used
- Preliminary hearings used
- Regular grand jury not recorded
 - Grand jury requested by District Attorney recorded
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

In North Carolina, grand jury is used in nearly all felony cases. Felony cases go to preliminary hearings. If probable cause is found at the preliminary hearing, the case is set for grand jury. A defendant can choose to waive grand jury and a “bill of information” is filed. In the general grand jury, only the grand jurors and witnesses are allowed in the room. Prosecutors are only in the room when the grand jury has a legal question. The general grand jury is secret and not recorded. NC Gen Stat 15A-623(d)-(e).

NORTH DAKOTA

- Grand jury is not used
- Preliminary hearings used

DESCRIPTION

Grand jury is not used in North Dakota. Cases are filed by information and then proceed to a preliminary hearing. A State's Attorney may request that a grand jury be called but the consent of a judge is required. ND Cent Code 29-10.1-02. To convene a grand jury, the State's attorney is required to gather supporting signatures from citizens. The amount of signatures must be equal to twenty-five percent of the total vote cast in the county for the last governor's election but cannot be fewer than two hundred twenty-five signatures nor exceed five thousand. ND Cent Code 29-10.1-02(3).

OHIO

- Grand jury used
- Preliminary hearings used
- Regular grand jury recorded
 - Transcript released only after witness testifies and judge determines that grand jury testimony was different than trial testimony
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

Grand jury and preliminary hearings are used in Ohio. Cases are first taken to a preliminary hearing at the municipal court level. If a judge finds probable cause at the preliminary hearing, the case is set for grand jury at the county level. Grand jury is recorded. One officer generally presents all the evidence for a single case. Prior to trial, the defense will file a motion for the grand jury transcript. The testimony is transcribed and held by the prosecutor. After the grand jury witness testifies at trial, and at the request of the defense, the judge will review the grand jury testimony of that witness *in camera*. The judge may release relevant portions of the testimony for impeachment purposes only. The transcript is returned to the court at the conclusion of the testimony.

OKLAHOMA

- Grand jury not used
 - Grand jury used by Attorney General's Office
- Preliminary hearings used
- When used, grand jury recorded
- Transcripts are released to parties upon request
 - Must request and obtain permission from Court and Attorney General's Office
- When used, testimony presented by police officers and civilian witnesses

DESCRIPTION

In Oklahoma, most felony cases are filed by information and proceed to preliminary hearings. The prosecutor's office has the ability to empanel a grand jury with county jurisdiction, but this is not done in practice.

OREGON

- Grand jury used
- Preliminary hearings generally not used
- Grand jury not recorded
- The rules of evidence apply with some exceptions enumerated by statute

DESCRIPTION

In Oregon, grand jury is used to obtain the majority of indictments. These proceedings are not recorded. Preliminary hearings are allowed by statute, but are rarely used in practice. The rules of evidence apply to grand jury proceedings, except as provided by statute. ORS 132.320.

PENNSYLVANIA

- Grand jury rarely used
- Preliminary hearings used
- Grand jury recorded
- Transcript disclosed
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

In Pennsylvania, grand jury is used infrequently. Generally cases are filed by complaint and then set for preliminary hearing. Until recently, grand juries in Pennsylvania did not have the power to indict felony cases and were used strictly as an investigative tool. Now, grand juries can indict cases when there are concerns of witness intimidation. When used, grand jury is recorded. Pennsylvania statutes do not require disclosure until prior to the witness's cross examination at trial. In practice, the transcript is frequently provided as part of pretrial discovery. When there are witness intimidation concerns, however, the transcript is not provided until the witness's cross examination.

RHODE ISLAND

- Grand jury used by Attorney General's Office
- Grand jury recorded
- Transcripts disclosed
 - Copy provided to the defense at the bail hearing
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

In Rhode Island, felony cases handled by the Attorney General's office and are taken to grand jury. Grand jury is recorded and transcribed. Rhode Island's rules of criminal procedure specifically provide that disclosure is not permitted. An exception to the non-disclosure requirement is that release may be permitted at the request of the defendant, "upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury." RI Super R Crim P Rule 6(3)(ii). The Rule grants the court the authority to restrict the use of the disclosed materials.

SOUTH CAROLINA

- Grand jury used
- Preliminary hearings used
- Grand jury not recorded
 - State-wide grand juries are recorded, transcribed, and provided to the defense
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

Grand jury and preliminary hearings are used in South Carolina. Felonies are taken first to a preliminary hearing and then to a county grand jury. County grand jury proceedings are no longer recorded. The recordation requirement was repealed in 1990. The only records kept pertaining to county grand jury are the cases heard and the vote of the grand jury.

The Attorney General and Chief of the South Carolina Law Enforcement Division may petition the Chief Administrative Judge for a state-wide grand jury. SC Code Ann 14-7-1630(B). If the petition is granted, a state-wide grand jury will be empaneled. State-wide grand jury testimony is recorded and a copy is provided to the defense at the defense's request.

SOUTH DAKOTA

- Grand jury used
- Preliminary hearings not used
- Grand jury recorded
- Transcript disclosed
 - Defense requests a copy of the transcript and transcript is disclosed
- Testimony presented by police officers and civilian witnesses

DESCRIPTION

Grand jury is used in South Dakota. All proceedings are electronically recorded except for the deliberations of the grand jurors. Evidence may be presented by law enforcement only but in practice, civilian witnesses often testify before the grand jury. The parties may request a copy of the recording or transcript and a copy will be provided. While the transcript is available to the parties, the transcript is confidential and not subject to public records requests.

TENNESSEE

- Grand jury used
- Preliminary hearings used
- Grand jury not recorded
 - Investigative grand juries are recorded, transcribed, and may be disclosed to defense
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

Grand jury and preliminary hearings are used in Tennessee. Felony cases are initially taken to a preliminary hearing. Cases then proceed to a regular grand jury. Regular grand jury is not recorded and no prosecutor is present. The grand jury may summon a prosecutor to answer a legal question.

Tennessee also has the option to empanel investigative grand juries. The prosecutor must file a petition with the court and the court will determine whether an investigative grand jury may be empaneled. These proceedings are recorded and transcribed. The transcripts may be available to the defense after the defense files a motion “showing grounds exist for a motion to dismiss the indictment because of matters occurring before the grand jury.” Tenn Code Ann 40-12-208(c).

TEXAS

- Grand jury used
- Grand jury recorded
- Transcript disclosed
 - Defense requests a copy of the transcript and transcript is disclosed
- Testimony presented by police officers and civilians

DESCRIPTION

Grand jury is used and recorded in Texas. Only the testimony of witnesses is recorded and transcribed. The transcript is secret and maintained by the court. The transcript may be available under court order. To obtain a copy, the defense must file a motion with the court and the State. The “court may order disclosure of the information, recording, or transcription on a showing by the defendant of a particularized need.” Tex Code Crim Proc, art 20.02(d). Parties will then appear and present arguments “for the continuation or end to the requirement of secrecy.” Tex Code Crim Proc, art 20.02(e).

UTAH

- Grand jury not used
- Preliminary hearings used

DESCRIPTION

While Utah statutes provide that all grand jury proceedings, except for deliberation, shall be recorded, grand jury is not used in Utah. Cases are filed by information and set for a preliminary hearing. A grand jury may be summoned if a panel of judges “finds good cause to believe a grand jury is necessary.” Utah Code Ann 77-10a-2 (2014).

VERMONT

- Grand jury not used
- Preliminary hearings used

DESCRIPTION

Grand jury is not used in Vermont. Felony cases are taken to a preliminary hearing. Rules regarding grand jury, however, are present in the Vermont Rules of Criminal Procedure. The rule states that “all proceedings must be recorded” and that “the prosecuting attorney will retain control of the recording, the reporter’s notes, and any transcript prepared from those notes.” VR Cr P Rule 6 (2015).

VIRGINIA

- Grand jury used
- Preliminary hearings used
- Regular grand jury not recorded
 - Special grand juries and multi-county grand juries are recorded when summoned
 - Transcript can be provided after motion is filed
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

Grand jury and preliminary hearings are used in Virginia. Cases are first taken to a preliminary hearing. If a judge finds probable cause at the preliminary hearing, the case is set for grand jury. Grand jury is not recorded. One officer generally presents all the evidence for a single case and no representative from the State is present. The grand jurors can summon a State's attorney to resolve a question of law.

Virginia also has special grand juries and multi-county grand juries that can be empaneled when specifically requested by a judge, a prosecutor, or by the regular grand jury. These proceedings are recorded and the transcript is sealed with the court. A copy of the transcript can be requested by defense and will be provided "if it appears that the permission is consistent with the ends of justice and is necessary to reasonably inform such person of the nature of the evidence to be presented against him, or to adequately prepare his defense."

WASHINGTON

- Grand jury not used
- Preliminary hearings not used

DESCRIPTION

Neither grand jury nor preliminary hearings are used in Washington. To file charges, the State files a Certification for Determination of Probable Cause. This document is prepared by a detective and reviewed by the prosecutor. The State will also file a charging instrument and requested bail amount. A judge will then review the Certification for Determination of Probable Cause. If the judge finds that there is probable cause, a warrant is issued for the defendant's arrest.

WEST VIRGINIA

- Grand jury used
- Preliminary hearings not used
- Grand jury recorded
- Transcript disclosed
 - Defense requests a copy of the transcript and transcript is disclosed
- Case agent state
 - Evidence presented by law enforcement

DESCRIPTION

Grand jury is used in West Virginia. All proceedings are recorded except for the deliberations of the grand jurors. Evidence is presented by police officers only. Generally one officer testifies to all the evidence in the case. After the evidence is presented, the recorded is sealed and filed with the court. Defense counsel then requests a copy of the transcript and it is provided. Although a copy is provided to the defense, the transcript is still confidential and never subject to public records requests.

WISCONSIN

- Grand jury not used
- Preliminary hearings used
 - Case agent preliminary hearing - evidence is presented by law enforcement only

DESCRIPTION

Grand jury is not used in Wisconsin. Every felony case is filed by a complaint and scheduled for a preliminary hearing. Hearsay is admissible and victims are not required to testify. Generally one officer testifies to all evidence in the case at the preliminary hearing.

WYOMING

- Grand jury not used
- Preliminary hearings used

DESCRIPTION

Grand jury is not used in Wyoming. Felony cases in Wyoming are taken to a preliminary hearing. Rules regarding grand jury, however, are present in the Wyoming Rules of Criminal Procedure. In order to empanel a grand jury, the grand jury must be summoned by a district judge. The rule states that grand jury “shall be recorded” and the notes or transcripts “shall remain in the custody or control of the attorney for the state unless otherwise ordered by the court in a particular case.” W R Cr P, Rule 6.