



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Deborah Del Prete Sullivan, Legal Counsel, Director Office of Chief Public Defender

Raised Bill 488 - An Act Concerning Grand Jury Reform

Judiciary Committee Public Hearing - March 24, 2014

The Office of Chief Public Defender is adamantly opposed to *Raised Bill No. 488, An Act Concerning Grand Jury Reform* and asks that the Judiciary Committee take no action on it. The bill raises numerous constitutional and procedural concerns that should not be adopted in a state whereby the prosecutor only need file an information, based upon probable cause, to charge a person of committing a criminal offense.

The Office of Chief Public Defender has been engaged in discussions pertaining to grand jury reform. At least three meetings were held and attended by the Honorable Elliott Solomon, the Honorable Maria Kahn, Deputy Chief Public Defender Brian Carlow, Chief State's Attorney Kevin Kane, Attorney Moira Buckley as the representative of the Connecticut Criminal Defense Lawyers Association and Alan Sobol, Esq. as the representative of the Criminal Justice Section of the Connecticut Bar Association.

At each meeting, there was extensive discussion in regard to: grand jury reform as sought by the Division of Criminal Justice; previous years' reports pertaining to the Investigatory Grand Jury System published as mandated by C.G.S. §54-47h; grand jury reform in other states; and, limiting any grand jury reform to certain crimes. Lacking from these discussions was any real evidence as to why grand jury reform is necessary in Connecticut especially in light of legislative reform that has taken place since 1985. (*See OLR Research Report, 2013-R-0366, Investigatory Grand Jury System, by James Orlando, Associate Attorney dated November 22, 2013*). However, despite the lack of consensus, the Office of Chief Public Defender is willing to continue the discussion that has taken place thus far.

Raised Bill No. 488, An Act Concerning Grand Jury Reform is almost identical to Raised Bill 6698 proposed in the 2013 session and quite similar to Senate Bill 695 proposed in the 2008 session which did not garner the support of this Committee. Raised Bill 488 is unnecessary and will only dilute the current grand jury process and put law abiding citizens in danger. Current law requires a panel of judges to report to the Chief Court Administrator the number of grand jury applications made and approved each year as well as the number of applications for extensions made. Attached are the Reports on the Investigatory Grand Jury System for the last three calendar years, 2011, 2012 and 2013. These reports demonstrate that of all of the applications made, none were denied. As the Division of Criminal Justice has not demonstrated that a problem exists that needs fixing, no action should be taken on this proposed bill. In addition, there is no necessity to have state officials duplicate federal law enforcement investigative efforts.

The bill as proposed is unconstitutional and *would effectively repeal the Fourth Amendment* to the United States Constitution and Article I, Section 7 of the Connecticut State Constitution in overly broad investigations that would be conducted by prosecutors and compel the attendance/testimony of witnesses which can include children. This legislation would impact upon innocent persons, not suspected of criminal behavior, to incur legal costs and force them to appear and testify as witnesses after only 72 hours has passed from the issuance of the subpoena, significantly disrupt their personal lives and could result in findings of contempt against innocent persons, including children, if they do not respond to the grand jury subpoena and testify or produce property. Property that could be subpoenaed can include personal belongings such as the witness's personal journals, computers and medical/psychiatric record in contradiction to the constitutional right to be free of unreasonable searches and seizures.

The bill removes the authority of the Judiciary to apply for a grand jury investigation and authorizes any prosecutor in consultation with the Chief State's Attorney to apply for a grand jury application based only upon the bald assertion that the "interests of justice require" it. Any such application would be made to the presiding judge and not to a panel of three judges as required under current law.

The proposal authorizes a grand jury to convene whenever a prosecutor believes that "the interests of justice require" it. As such it strips away all other requirements in the statutes that currently need to be met including demonstrating that the grand jury is necessary to determine whether probable cause exists that a crime has been committed and that all other efforts of investigation have failed. Put simply, the standard of probable cause which currently exists and is well settled in the law is totally removed from this proposal. This "interest of justice" threshold, not defined in the law, is subjective and a minimal standard with no expressed criteria for implementation. Such expansive language allows unfettered discretion to state prosecutors to investigate whenever he/she wants information when they "reasonably

suspect" a crime was committed and they wish to compel witnesses to testify and produce evidence. The bill substantially extends the time period for a grand jury to convene from 6 months to 12 months and allows for extensions of time to be granted only if the "interests of justice" require such.

Witnesses that can be summoned include people of all ages, including children. Any subpoenas issued must under the proposal be approved by the Judge and must be served at least 72 hours before the date the person so subpoenaed must appear and give testimony. That provides a person so subpoenaed only 3 days to obtain counsel and advice regarding the scope of the subpoena and to produce what could be voluminous records and documents. If a person is indigent and needs counsel, they will need to wait until they can travel to the court where the grand jury is convening, even if across the state, and apply for the appointment of counsel after completing an affidavit of indigency. They then need to wait until counsel is appointed and they can make an appointment to meet with their court appointed counsel, again to discuss the scope of the subpoena as it applies to them.

Although the bill ostensibly allows assistance of counsel, once inside the grand jury room, the witness is alone answering the questions of the Judge and/or the prosecutor(s). The witness's lawyer is not allowed inside the grand jury room, although the witness can leave the room to consult with his/her counsel "at reasonable times" and "for a reasonable period of time" upon request, but there is no guarantee that the witness will be able to meet with the counsel for the amount of time necessary to obtain the needed advice. It appears that any discretion as to when and for how long such periods of time are within the discretion of the prosecutor.

The process is especially troubling in cases where juveniles are subpoenaed to appear before the grand jury. Our office has had some experience with this issue of a juvenile client subpoenaed from a residential facility to testify regarding incidents of gun violence in a Connecticut city. Although the client was not the target of the investigation, he clearly felt intimidated, confused and distraught about his safety should he testify about any of these events.

Section 8 deletes "grand jury" from subsection (2) and is confusing in regard to the prosecutor's subpoena power as it discusses investigations by the prosecutors.

Therefore, the Office of Chief Public Defender urges this Committee not to take any action on this proposed legislation. The Office of Chief Public Defender remains committed to continue its participation in discussions with the Division of Criminal Justice, the Judicial Department, the CCDLA and the CBA, but is opposed to the current proposal.



STATE OF CONNECTICUT
JUDICIAL BRANCH

CHAMBERS OF
PATRICK L. CARROLL III
CHIEF COURT ADMINISTRATOR

231 CAPITOL AVENUE
HARTFORD, CT 06106

January 30, 2014

Governor Dannel P. Malloy
Executive Chambers
210 Capitol Avenue
Hartford, CT 06106

Re: Report on the Investigatory Grand Jury System

Dear Governor Malloy:

Pursuant to General Statutes § 54-47h, I submit the following report concerning the investigatory grand jury system, which is based upon the report of the panel of judges to the Chief Court Administrator.

This report contains information covering the period from January 1, 2013 through December 31, 2013.

1. There were no applications for an investigation into the commission of a crime or crimes filed with the panel.
2. The panel approved no applications for an investigation into the commission of a crime or crimes.
3. The panel approved one (1) application for an extension of time. There were no amendments to orders of the panel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrick L. Carroll III".

Judge Patrick L. Carroll III
Chief Court Administrator

PLC:apm



STATE OF CONNECTICUT
JUDICIAL BRANCH

CHAMBERS OF
BARBARA M. QUINN, JUDGE
CHIEF COURT ADMINISTRATOR

231 CAPITOL AVENUE
HARTFORD, CT 06106

January 29, 2013

Governor Dannel P. Malloy
Executive Chambers
210 Capitol Avenue
Hartford, CT 06106

Re: Report on the Investigatory Grand Jury System

Dear Governor Malloy:

Pursuant to General Statutes § 54-47h, I submit the following report concerning the investigatory grand jury system, which is based upon the report of the panel of judges to the Chief Court Administrator.

This report contains information covering the period from January 1, 2012 through December 31, 2012.

1. There was one (1) application for an investigation into the commission of a crime or crimes filed with the panel.
2. The panel approved one (1) application for an investigation.
3. The panel approved two (2) applications for an extension of time. There were no amendments to orders of the panel.

Respectfully submitted,

Judge Barbara M. Quinn
Chief Court Administrator

BMQ:apm



STATE OF CONNECTICUT
JUDICIAL BRANCH

CHAMBERS OF
BARBARA M. QUINN, JUDGE
CHIEF COURT ADMINISTRATOR

231 CAPITOL AVENUE
HARTFORD, CT 06106

January 31, 2012

Governor Dannel P. Malloy
Executive Chambers
210 Capitol Avenue
Hartford, CT 06106

Re: Report on the Investigatory Grand Jury System

Dear Governor Malloy:

Pursuant to General Statutes § 54-47h, I submit the following report concerning the investigatory grand jury system, which is based upon the report of the panel of judges to the Chief Court Administrator.

This report contains information covering the period from January 1, 2011 through December 31, 2011.

1. There were two (2) applications for an investigation into the commission of a crime or crimes filed with the panel.
2. The panel approved two (2) applications for an investigation.
3. There was one (1) application for an extension of time, which was approved by the panel. There were no amendments to orders of the panel.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Barbara M. Quinn".

For Judge Barbara M. Quinn
Chief Court Administrator

By Patrick L. Carroll
Deputy Chief Court Admin.

BMQ:apm



OLR RESEARCH REPORT

November 22, 2013

2013-R-0366

INVESTIGATORY GRAND JURY SYSTEM

By: James Orlando, Associate Attorney

This report describes (1) the current law for Connecticut's investigatory grand jury system and (2) legislative changes to that system since 1985.

SUMMARY

By law, an investigatory grand jury can be empanelled to conduct investigations of:

1. government corruption;
2. Medicaid vendor fraud;
3. racketeering and organized crime (specifically, violations of the Corrupt Organizations and Racketeering Activity Act or CORA);
4. election law violations;
5. certain terrorism-related crimes; and
6. felonies punishable by more than five years imprisonment for which the prosecutor can show that he or she has no other means of obtaining sufficient information as to whether a crime has been committed or the perpetrator's identity.

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The investigatory grand jury consists of a judge, judge referee, or three-judge panel. A judge or prosecutor may apply to empanel a grand jury if he or she has a reasonable belief that the administration of justice requires an investigation to determine whether there is probable cause to believe a crime has been committed. Among other requirements, if the applicant is the chief state's attorney or a state's attorney, he or she also must demonstrate that (1) normal investigatory methods have failed, are likely to fail, or are too dangerous or (2) due to the specific nature of the investigation or alleged crime, it is reasonable to conclude that normal investigative procedures would not advance the investigation or would fail to secure and preserve evidence or testimony that might be compromised.

The grand jury and attorneys or state's attorneys who are asked to assist it may subpoena people to testify before it and produce documents. Witnesses must be informed of their right to have counsel present and, if they are targets of the investigation, of their right to remain silent. At the conclusion of the investigation, the grand jury must file its finding of whether there is probable cause to believe a crime was committed with the court, the panel that approved the application for a grand jury, and the prosecutor, if any, who applied for the grand jury.

The legislature created the investigatory grand jury in 1941, giving it authority to investigate any crime. In 1985, the legislature restricted the scope of grand jury investigations to crimes that concerned (1) state and local government corruption; (2) Medicaid vendor fraud; (3) CORA violations; and (4) class A, B, or C felonies when the chief state's attorney could show that he or she had no other means of obtaining information concerning whether a crime had been committed. Among other changes in 1985, for applications from the chief state's attorney or a state's attorney, the legislature changed the standard used to determine if an investigatory grand jury was necessary.

In 1987, the legislature expanded the list of crimes subject to an investigatory grand jury to include (1) unclassified felonies punishable by more than five years imprisonment when there was no other means of obtaining information and (2) election law violations. In 2002, the legislature further expanded the list to include felonies involving the unlawful use or threatened use of physical force or violence committed with intent to intimidate or coerce the civilian population or a government unit. The legislature last made substantive changes to the grand jury statutes in 2003.

In addition to investigatory grand juries, there were previously indicting grand juries in Connecticut, but they were abolished over 30 years ago. Until November 1982, Connecticut's Constitution required a grand jury indictment before someone could be prosecuted for a crime punishable by death or life imprisonment. A constitutional amendment eliminated this requirement because of perceived inequities in the grand jury process. By statute, since May 26, 1983, crimes charged by the state are prosecuted by complaint or information, rather than grand jury indictment. For information on the history of Connecticut's indicting grand jury, see OLR Report [2002-R-0088](#).

CURRENT INVESTIGATORY GRAND JURY LAW

By law, an investigatory grand jury is a judge, constitutional state referee, or three-judge panel appointed "to conduct an investigation into the commission of a crime or crimes" ([CGS § 54-47b](#)).

Scope of Grand Jury Investigations

Investigatory grand juries can investigate only:

1. state and local government corruption;
2. Medicaid vendor fraud;
3. CORA violations;
4. election law violations;
5. felonies involving the unlawful use or threatened use of physical force or violence committed with intent to intimidate or coerce the civilian population or a government unit; and
6. class A, B, or C felonies or unclassified felonies punishable by more than five years imprisonment, for which the chief state's attorney or state's attorney can show that there is no other means of obtaining sufficient information as to whether a crime has been committed or the identity of the person or people who may have committed it ([CGS § 54-47b](#)).

Application for Investigation

Superior, Appellate, or Supreme Court judges; the chief state's attorney; or a state's attorney may apply to a panel of three Superior Court judges specially designated by the Supreme Court chief justice, for

a grand jury investigation. The applicant must have a reasonable belief that the administration of justice requires an investigation to determine whether or not there is probable cause to believe a crime has been committed. Among other things, he or she must include in the application a full and complete statement of the facts and circumstances that justify this belief. If the applicant is the chief state's attorney or a state's attorney, he or she also must include a full and complete statement as to:

1. the status of the investigation and evidence collected by the application date;
2. (a) what other normal investigative procedures were tried and why they failed or (b) the specific nature of the investigation or alleged crime that leads him or her to reasonably conclude that normal investigative procedures would not advance the investigation or would fail to secure and preserve evidence or testimony that might be compromised;
3. if other normal investigative procedures were not tried, the reasons they are unlikely to succeed or are too dangerous to use; and
4. the reasons for the applicant's belief that an investigatory grand jury and the investigative procedures it employs will lead to a finding of probable cause that a crime was committed (CGS § 54-47c).

Panel Approval of Applications

The panel reviewing applications may approve them and order an investigation if it finds that:

1. the administration of justice requires an investigation to determine if there is probable cause to believe that a crime was committed;
2. for applications submitted by the chief state's attorney or a state's attorney, (a) other normal investigative procedures have failed or reasonably appear to be likely to fail or too dangerous to try or (b) due to the specific nature of the investigation or alleged crime, it is reasonable to conclude that normal investigative procedures would not advance the investigation or would fail to secure and preserve evidence or testimony that might be compromised; and

3. the investigative procedures that an investigatory grand jury uses appear likely to succeed in determining if there is probable cause to believe that a crime was committed (CGS § 54-47c(d)).

The panel must specify its findings on these issues in its order for the investigation.

If the panel approves the application and orders an investigation, the chief court administrator must (1) appoint a grand jury and (2) designate a court location where motions to quash and contempt proceedings will be heard and investigation findings and records filed. The panel's order must specify the investigation's scope and its duration, which may be up to six months. Subsequently, the panel may approve up to two (1) six-month extensions to the duration or (2) changes in the investigation's scope (CGS § 54-47d).

Investigation Summary; Private Nature of Investigation

The panel's order and the application must be sealed, but the panel must submit to the chief court administrator a summary of the investigation's scope and recommendation for the appropriate court location to designate for the matter as specified above. This summary is available to the public unless a majority of the panel determines it should seal the summary to protect an individual's safety or the investigation itself, or to comply with other statutes or court rules.

The grand jury must conduct its investigation in private unless the panel, by majority vote, determines that disclosure is in the public interest (CGS § 54-47e).

Attorney Assistance to Grand Jury; Grand Jury Subpoena Power

The grand jury may seek assistance with its investigation from the chief state's attorney or state's attorney who applied for the grand jury, or, if a judge was the applicant, from an attorney the grand jury appoints. The grand jury may also appoint any other attorney to provide assistance when needed in the interest of justice. It may subpoena people to testify before it and produce documents. If a summoned witness fails to comply, the grand jury may report this to the appropriate state's attorney or the chief state's attorney, who in turn may file a complaint in criminal court. After a show cause hearing, the court may punish the witness for contempt (CGS § 54-47f(a)).

Rights to Counsel and Target Warnings

The grand jury or the assisting attorneys may question witnesses, who must be informed of their right to have counsel present and to consult with counsel. An official court stenographer or his or her assistant must record the testimony. The official conducting the investigation must let witnesses know whether they are targets of the investigation, and advise targets of their federal and state constitutional rights not to be compelled to testify or give evidence against themselves. In addition, attorneys appointed to assist in the investigation must disclose to the grand jury information they possess or control about targets that would tend to exonerate them (CGS § 54-47f).

Investigation Findings and Record

Filing Findings and Records. Within 60 days after the investigation ends, the grand jury must file its finding with the court; the panel of judges that receives applications for grand jury investigations; and the chief state's attorney or the state's attorney, if any, who applied for the grand jury. The finding must state whether there is probable cause to believe a crime was committed. It may include all or part of the investigation record. However, no part of the record may be disclosed that contains allegations that a person committed a crime unless the grand jury found probable cause that the person committed it or he or she requests release of that part of the record.

In addition, the stenographer must file the investigation record with the court and the panel. This record is available upon request, and without a hearing, to the chief state's attorney or the state's attorney who applied for the grand jury (CGS § 54-47g(a)).

Public Access and Chief State's Attorney or State's Attorney Request for Nondisclosure. The grand jury finding is open to public inspection and copying at the court seven days after it is filed, unless, within that period, the chief state's attorney or state's attorney with whom it was filed requests that the grand jury not disclose all or part of its finding. If such a request is filed, the grand jury must notify the person filing the motion and any other interested parties (which can include the subject of the testimony and those who testified, among others) and hold a hearing within 15 days. The grand jury must issue a decision and send copies to all those it notified within five days of the hearing's completion. It can prohibit disclosure only if it specifically finds on the record that:

1. there is a substantial probability that one of the following interests will be prejudiced by publicity: (a) a person's right to a fair trial, (b) prevention of potential defendants from fleeing, (c) prevention of subornation of perjury or witness tampering, or (d) protection of the lives and reputations of innocent people which would be significantly damaged by release of uncorroborated information;
2. prohibiting disclosure would prevent that prejudice; and
3. reasonable alternatives to prohibiting disclosure cannot adequately protect that interest.

A nondisclosure order must be written to protect the particular interest at issue. A person aggrieved by an order has 72 hours to appeal it to the Appellate Court (CGS § 54-47g(b) and (c)).

Applications for Disclosure of Sealed Records. In general, any part of the record not disclosed with the finding is sealed, but a person can apply to the panel for disclosure of sealed portions of the record. The panel must give notice and hold a hearing on such an application. By a majority vote, the panel can disclose any part of the record that is in the public interest. But records containing allegations that a person committed a crime where the grand jury did not find probable cause cannot be disclosed unless the subject of the allegation requests release. A person aggrieved by the panel's order has 72 hours to appeal it to the Appellate Court (CGS § 54-47g(a)).

Access by Witnesses and the Accused. Even if the grand jury issues a nondisclosure order, a witness can apply to the criminal presiding judge in the judicial district where the investigation record is filed (or the judge's designee) for access to and a copy of the record of his or her testimony. The witness must have access at reasonable times and be allowed to copy this record unless the judge or designee finds after a hearing and for good cause that it is not in the best interest of justice (CGS § 54-47g(f)). If a person accused of a crime in the investigation requests access to or a copy of the record of his or her own testimony, the presiding judge or his or her designee must grant it (CGS § 54-47g(g)).

HISTORY OF CHANGES TO CONNECTICUT'S INVESTIGATORY GRAND JURY

The legislature enacted the investigatory grand jury statute in 1941 (§ 889f. of the 1941 Suppl.). As originally enacted, it provided only for investigations by the Superior Court. Generally, investigatory grand juries conducted investigations when the administration of justice required one to determine whether there was probable cause to believe that a crime had been committed. Legislation in 1985 restricted the scope of these investigations. Below, we describe substantive legislative changes to the investigatory grand jury process since 1985.

PA 85-611

PA 85-611 restricted the scope of grand jury investigations to (1) state and local government corruption; (2) Medicaid vendor fraud; (3) CORA violations; and (4) class A, B, or C felonies when the chief state's attorney could show he or she had no other means of obtaining information about whether a crime had been committed. Prior law permitted grand juries to investigate any type of criminal activity.

The act required the Connecticut Supreme Court's chief justice to appoint a panel of three superior court judges to receive and decide applications for grand jury investigations. Prior law allowed the chief court administrator or the Superior Court in any judicial district to order the investigations.

It specifically authorized Superior, Appellate, and Supreme Court judges, as well as the chief state's attorney or a state's attorney, to apply for a grand jury investigation. It required applications from the chief state's attorney or a state's attorney to include facts demonstrating that normal investigatory methods had failed, were likely to fail, or were too dangerous.

It specified that the matter under investigation, the investigation itself, and documents related to the investigation were all private and not available to the public unless the panel, by at least a two-thirds vote, authorized release of the information or documents in the public interest.

The act also added several protections to the investigatory grand jury procedures, such as (1) specifically authorizing witnesses to consult with counsel (the law already gave witnesses the right to counsel), (2) requiring that witnesses who were targets of investigations be advised of their constitutional right not to testify or give self-incriminating evidence, and (3) requiring attorneys assisting in the investigation to disclose to the grand jury exculpatory evidence.

PA 87-350

PA 87-350 expanded the scope of grand jury investigations to include election law violations. It also expanded the scope concerning felonies punishable by more than five years imprisonment to include unclassified felonies. It authorized grand jury investigations of such felonies when there was no other way of identifying who may have committed the crime, rather than only when there was no other way of demonstrating a crime had been committed. In addition, it authorized state's attorneys, rather than only the chief state's attorney, to make this determination.

The act required that the three-judge panel that authorizes investigatory grand juries, not just the court, receive a copy of the grand jury's finding, and that the panel be given access without any court hearing to the stenographic record of the investigation. The act also granted the chief state's attorney or a state's attorney, if he or she applied for the grand jury, access to the record, and required he or she be given a copy of the finding.

Among other changes, the act also deleted a requirement that an application for an extension of a grand jury include the grand jury's interim findings.

PA 88-148

PA 88-148 allowed any witness in a grand jury investigation, or anyone accused of a crime as a result of such an investigation, to obtain a copy of the transcript of his or her testimony. They were already allowed to access their testimony.

The act applied to this new provision a judge's existing right to deny a witness (but not an accused person) access if, after a hearing, the judge finds that granting access is not in the best interest of justice.

PA 88-345

PA 88-345 made all investigatory grand jury findings available to the public unless the grand jury specifically stopped disclosure. Findings could include portions of the record that the grand jury incorporated. Other parts of the record remained secret unless the panel found that release was in the public interest. The act prohibited the panel from releasing portions of the record containing criminal allegations about a person when the grand jury did not find probable cause that the person committed a crime, but allowed that person to request disclosure.

The act allowed the chief state's attorney or the state's attorney who requested the investigation to ask the grand jury not to disclose all or part of the findings. The investigatory grand jury had to hold a hearing within 15 calendar days of the motion's filing and render its decision within five days of the end of the hearing. It had to deny the motion unless it found a substantial probability that one of the following interests would be harmed and there were no reasonable alternatives to nondisclosure:

1. a person's right to a fair trial,
2. prevention of a potential defendant's flight,
3. prevention of perjury or tampering with a witness, or
4. protection of lives and reputations of innocent people that would be significantly damaged by releasing uncorroborated information.

The act specified that any nondisclosure order did not override the right of a witness or accused person to have access to or obtain a copy of the transcript of his or her own testimony before the grand jury.

Under the act, anyone aggrieved by an investigatory grand jury order could appeal within 72 hours to the Appellate Court, which must hold an expedited hearing on the appeal.

The act required the three-judge panel that ordered a grand jury investigation to submit to the chief court administrator a summary of the investigation's scope and a recommendation on a court location where related court proceedings would be held and where the finding and record would be filed. It made this summary public unless a majority of the panel ordered it sealed to protect someone's safety, protect the investigation, or comply with other laws prohibiting disclosure.

PA 98-48

PA 98-48 expanded the information the chief state's attorney or a state's attorney must include in an application to the three-judge panel responsible for authorizing investigatory grand jury investigations, to include a full and complete statement of:

1. the status of the investigation and evidence collected by the application date,
2. why other normal investigative procedures that were tried failed, and
3. the reasons for the applicant's belief that an investigatory grand jury and the investigative procedures it employs will lead to a finding of probable cause that a crime was committed.

The act authorized the panel reviewing applications to approve them and order an investigation if it found that:

1. the administration of justice requires an investigation to determine if there is probable cause to believe a crime was committed;
2. for applications submitted by the chief state's attorney or a state's attorney, other normal investigative procedures have failed or reasonably appear likely to fail or too dangerous to try; and
3. the investigative procedures that an investigatory grand jury uses appear likely to succeed in determining if there is probable cause to believe that a crime was committed.

In orders authorizing the appointment of an investigatory grand jury, the act required the three-judge panel to specify its reason for making all of these findings. Prior law only required the panel to specify its reasons for its findings under (1).

PA 02-97

PA 02-97 added to the list of crimes that can be the subject of a grand jury investigation felonies involving the unlawful use or threatened use of physical force or violence committed with intent to intimidate or coerce the civilian population or a government unit.

PA 03-273

PA 03-273 changed one of the criteria for approving grand jury investigations. Under prior law, the chief state's attorney or state's attorney had to state in his or her application for a grand jury that other normal investigative procedures had failed, were unlikely to succeed, or were too dangerous. The act added an additional option to this criterion to allow the prosecutor to state the specific nature of the investigation or alleged crime that led him or her to reasonably conclude that normal investigative procedures would not advance the investigation or would fail to secure and preserve evidence or testimony that might be compromised.

The act made the same change to the criteria that the panel of judges must consider when determining whether to approve a grand jury investigation. As with the other criteria under existing law, the act required the panel to specify its findings relating to this criterion in its order.

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