

GUIDANCE FOR REMOTE GRAND JURY PROCEEDINGS

The Chief Justice recently lifted a statewide stay of regular grand jury proceedings and authorized the chief judges of the superior courts to resume regular grand jury proceedings as of September 10, 2020.¹ The resumption of regular grand jury proceedings already is underway in several counties, and more counties are expected to resume regular grand jury proceedings soon. To the extent that grand jurors can be assembled safely and consistent with public health guidance, it is anticipated that the resumption of regular grand jury proceedings in most counties will involve the whole grand jury meeting in person at the courthouse. Public health conditions, however, vary from county to county and may change over time, and the availability of facilities suitable for grand jury proceedings likewise varies from county to county. In some counties, it may be inadvisable in light of existing public health conditions for a grand jury to meet in person, and in some counties, facilities in which a grand jury could meet in person consistent with public health guidance may not be readily or routinely available. Moreover, even in counties in which it now is feasible to resume meetings of a grand jury in person, a deterioration of public health conditions could render meetings in person inadvisable, and competing demands could reduce the availability of facilities suitable for meetings in person, especially after the resumption of jury trials.² For these reasons, it is prudent to issue guidance for remote grand jury proceedings as an alternative to proceedings in person.

As described below, remote grand jury proceedings may take a variety of forms, and this guidance is intended to afford the flexibility necessary for the resumption and continuation of regular grand jury proceedings in adverse or changing public health conditions and in counties with limited facilities suitable for grand jury proceedings consistent with public health guidance. In each county, it is for the chief judge of the superior court, in consultation with the district attorney, to determine whether regular grand jury proceedings should be resumed and continued, and if so, whether those proceedings should be conducted

¹ See Sixth Order Extending Declaration of Statewide Judicial Emergency (Sep. 10, 2020).

² See Seventh Order Extending Declaration of Statewide Judicial Emergency (Oct. 10, 2020).

in person under guidance previously issued³ or remotely under this guidance.

Form of Remote Grand Jury Proceedings

Remote grand jury proceedings may take a variety of forms, depending on public health conditions, the availability of facilities for grand jury proceedings, the availability of technology, communications infrastructure, and technological support necessary for remote grand jury proceedings, and other local circumstances. These various forms include, but are not limited to:

- Proceedings in which all of the grand jurors are physically present in the courthouse or another public building, but they are dispersed in small groups or individually to multiple locations within the building, all of which are linked by closed-circuit, intranet-based, or internet-based video-conferencing and document-sharing technology.
- Proceedings in which some grand jurors are physically present in the courthouse or another public building, and other grand jurors are physically present in one or more other public buildings, all of which are linked by closed-circuit, intranet-based, or internet-based video-conferencing and document-sharing technology.
- Proceedings in which some grand jurors are physically present in the courthouse or another public building, and other grand jurors are physically present in their places of residence or other private places, all of which are linked by internet-based video-conferencing and document-sharing technology.
- Proceedings in which all of the grand jurors are physically present in their places of residence or other private places and participate remotely with internet-based video-conferencing and document-sharing technology.

³ See Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020).

This wide range of forms offers significant flexibility for the resumption and continuation of regular grand jury proceedings in a variety of public health conditions and other local circumstances. Each form has its own advantages and disadvantages, and the form of remote grand jury proceedings that is best for one county may not be suitable for another.

Preliminary Considerations

In assessing whether remote grand jury proceedings are feasible and advisable, and if so, which form of remote grand jury proceedings is most suitable, a chief judge should consider:

1. *Current public health conditions* in the county and the extent to which, in light of those conditions, grand jurors safely may be assembled in person at the courthouse or another public building suitable for in-person grand jury proceedings. To the extent that public health conditions are conducive to an assembly in person of most grand jurors, consideration also should be given to grand jurors who may be especially vulnerable to COVID-19 by virtue of age or medical condition, including whether the participation of those grand jurors may be enhanced by some form of remote grand jury proceedings. Moreover, to the extent that public health conditions do not absolutely preclude an assembly in person of the grand jury but there nonetheless is substantial community spread of COVID-19, consideration should be given to the possibility that, if the grand jury meets in person, the infection or exposure of one or more grand jurors could require some or all of the remaining grand jurors to quarantine,⁴ significantly impeding the work of the grand jury, whereas remote grand jury proceedings may mitigate that risk.

2. *The availability of facilities* in the courthouse or other public buildings in which the whole grand jury or a part of the grand jury may be assembled in person consistent with public health guidance, including guidance on social distancing, and in which grand jury proceedings may

⁴ See DPH Eighth Amended Administrative Order for Public Health Control Measures (July 28, 2020).

be conducted with reasonable assurance that grand jury secrecy is maintained. In counties in which the regular grand jury room is too small to permit the assembly of the whole grand jury consistent with public health guidance, the most obvious alternative for grand jury proceedings in person may be a ceremonial courtroom, other large courtroom, or a jury assembly room. Consideration must be given, however, to competing demands for those facilities, including jury trials and essential nonjury proceedings that cannot lawfully or practically be conducted remotely, some of which may be entitled to equal or greater priority than grand jury proceedings. Moreover, although a facility certainly may be repurposed from time-to-time, such that it could be used for grand jury and other proceedings, the inherent uncertainty about the duration of jury trials and other proceedings, as well as public health guidance requiring sanitation measures for facilities used by different persons for different purposes, may impede the reliable scheduling of grand jury proceedings in facilities also used for other purposes. Aside from facilities in a courthouse, it may be feasible to assemble the whole grand jury in an auditorium, gymnasium, conference center, or other large room in another public building consistent with public health guidance, although the use of facilities outside a courthouse may present concerns about the extent to which grand jury secrecy can be reasonably assured. When no facility suitable for the assembly of the whole grand jury in person is available, consideration should be given to the availability of multiple smaller facilities in the courthouse or one or more other public buildings to which grand jurors may be dispersed in small groups or individually for remote grand jury proceedings and in which grand jury secrecy can be reasonably assured.

3. *The availability of technology, communications infrastructure, and technological support* for remote grand jury proceedings. Whether grand jurors participate in remote proceedings from a courthouse, another public building, or a private place, and whether they are dispersed in small groups or individually, remote grand jury proceedings are feasible only to the extent that the court can ensure:

- That the grand jury has access to video-conferencing and document-sharing applications with security features that provide reasonable assurance of grand jury secrecy, which

would allow the grand jurors to observe and hear one another in a manner sufficient to enable each grand juror to fully participate in the proceedings, to observe and hear the prosecuting attorney, to observe and hear witnesses in a manner sufficient to enable the grand jurors to assess their demeanor and credibility, and to view documentary evidence. If all grand jurors are physically present in the courthouse or one or more other public buildings for remote grand jury proceedings, it may be feasible to use closed-circuit or intranet-based video-conferencing and document-sharing applications, which may be especially conducive to assuring grand jury secrecy. But even when internet-based applications are used, a variety of video-conferencing and document-sharing applications are commercially available with a range of security measures that may give reasonable assurance of grand jury secrecy.

- That grand jurors have access to technology necessary to utilize the video-conferencing and document-sharing applications. Personal ownership of computers, tablets, and other electronic devices suitable for video-conferencing and document-sharing purposes is common but far from universal, and the portion of the population with private access to such devices may vary significantly from county to county. In the event that it is necessary for each grand juror to individually have access to such a device, the court should be prepared to provide devices for grand jurors without a suitable device, and in counties in which personal ownership of such devices is less common, the court should anticipate the possibility that a significant number of grand jurors may need to be provided with suitable devices. The court may wish to inquire of prospective grand jurors about the extent to which they have personal access to such devices, although lack of personal access to such a device should not be a reason for excusing a prospective grand juror. In the event that the grand jurors will be dispersed in small groups to multiple locations within the courthouse or one or more other public buildings, it may not be necessary for each grand juror to individually have

access to a device, and the court should consider whether technology is available to permit the grand jurors in each of those locations to participate remotely without individual devices.

- That grand jurors have access to communications infrastructure necessary to reliably and securely connect with the video-conferencing and document-sharing applications. In the event that all or some of the grand jurors will participate remotely in grand jury proceedings from their own places of residence or other private places, it will be necessary for those grand jurors to have reliable access to high-speed internet service, the availability of which may vary significantly from county to county and within each county. The court may wish to inquire of prospective grand jurors about the extent to which they have personal access to high-speed internet service, although lack of personal access to such service should not be a reason for excusing a prospective grand juror. For grand jurors without access to high-speed internet service, the court should be prepared to provide such access, whether at the courthouse or another public building or by installation of an internet hotspot at some other location. In the event that all of the grand jurors will be physically located within the courthouse or another public building for remote grand jury proceedings, the court with greater confidence can assure access to the necessary communications infrastructure, whether closed-circuit, intranet, or internet.
 - That the court has sufficient resources to provide grand jurors with technological support as needed to facilitate remote grand jury proceedings. This requirement may be satisfied most effectively when grand jurors participate in remote grand jury proceedings from locations within the courthouse or one or more other public buildings, where court IT personnel are near and can be readily available to provide assistance.
4. *Any other relevant circumstances.*

Essential Requirements for Remote Grand Jury Proceedings

If a chief judge determines that remote grand jury proceedings are feasible and advisable, the chief judge should prepare a written protocol for remote grand jury proceedings, which at a minimum must address:

1. *The physical location of grand jurors participating remotely in grand jury proceedings, including:*

- Whether grand jurors are to be dispersed in small groups or individually, and if grand jurors are to assemble in small groups, the measures necessary to assure that those assemblies are consistent with public health guidance.⁵
- The physical locations from which grand jurors are permitted to participate remotely in grand jury proceedings, whether in the courthouse, in one or more other public buildings, or in private places to be selected by each grand juror.
- A description of any security measures associated with those physical locations that are necessary to reasonably assure grand jury secrecy, such as measures for securing locations within the courthouse or other public buildings from which grand jurors may participate in remote grand jury proceedings, as well as special instructions to be given to grand jurors who may participate in remote grand jury proceedings from private places of their choosing.
- How the oath of grand jurors is to be administered.⁶

⁵ To the extent that grand jurors are assembled in person at any location, any such assembly must comport with the previously-issued Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020).

⁶ See OCGA §15-12-67 (b). See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020) ("[A]ny purported requirement of the laws of this state, including but not limited to certain provisions of Code Sections 15-12-67 and 15-12-68, that prohibits remote administration of oaths for grand jury purposes is hereby suspended. ").

2. *The technology, communications infrastructure, and for remote grand jury proceedings, including:*

- A designation of the video-conferencing and document-sharing applications to be used in remote grand jury proceedings, as well as a description of any security measures associated with those applications that are necessary to reasonably assure grand jury secrecy, including instructions or other measures necessary to ensure that the proceedings are not recorded by any person other than an authorized court reporter.
- A designation of the person to host or otherwise control the video-conferencing application during remote grand jury proceedings, and if such person is not the foreperson or another grand juror, the measures necessary to assure that such person does not have access to the deliberations of the grand jury, so as to reasonably assure grand jury secrecy.
- A description of computers, tablets, other electronic devices, other technology, and communications infrastructure to be used by grand jurors to participate remotely in grand jury proceedings.
- A procedure for providing access to necessary technology and communications infrastructure for grand jurors without such access.
- A designation of IT personnel assigned to support remote grand jury proceedings.
- If applicable, a description of any technical training to be provided to the foreperson, assistant foreperson, secretary, and other grand jurors prior to the commencement of remote grand jury proceedings.

3. *The participation of prosecuting attorneys, witnesses, court reporters, and other persons in grand jury proceedings, including:*

- The physical locations from which such persons are permitted to participate in remote grand jury proceedings and whether

such persons will appear in the physical presence of one or more grand jurors.

- To the extent that witnesses will not appear in the physical presence of one or more grand jurors, how the oath is to be administered to such witnesses.⁷
- To the extent that prosecuting attorneys, witnesses, court reporters, and other persons are to be given their own access to the video-conferencing and document-sharing applications used for remote grand jury proceedings, the procedures necessary to assure that such persons do not have access to the deliberations of the grand jury, so as to reasonably assure grand jury secrecy.
- Measures necessary to ensure that grand jurors can observe and hear witnesses in a manner sufficient to enable the grand jurors to assess their demeanor and credibility.

4. *If the grand jury is to be selected remotely, the procedures to be employed in connection with remote grand jury selection, including:*

- The content of any written questionnaire to be sent to prospective grand jurors to facilitate remote grand jury selection.
- Instructions to be given to prospective grand jurors in connection with remote grand jury selection.
- How the oath of prospective grand jurors is to be administered.⁸

⁷ See OCGA § 15-12-68. See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020).

⁸ See OCGA § 15-12-66 (b). See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020).

- The process by which prospective grand jurors are to be examined by the presiding judge or the district attorney as to their qualifications to serve.⁹
- A procedure for providing access to necessary technology and communications infrastructure for prospective grand jurors without such access.

5. *The procedures to be employed by the foreperson and grand jurors in connection with remote grand jury proceedings, including:*

- Instructions to be given to grand jurors about the procedures for remote grand jury proceedings and the maintenance of grand jury secrecy in remote grand jury proceedings, including the need for grand jurors to participate remotely from a location in which no unauthorized person can observe or hear the proceedings, that no portion of the proceeding may be recorded other than by an authorized court reporter, and the need for grand jurors to be present during the entirety of each presentment.
- Instructions to be given to grand jurors about the steps to be taken in the event of a breach of grand jury secrecy, such as the appearance of an unauthorized person through the videoconferencing application or in the physical presence of any grand juror participating in remote grand jury proceedings.
- Instructions to be given to grand jurors about steps to be taken in the event that a grand juror encounters a technical problem or that a grand juror requires a break to address any personal issues.
- A process whereby the foreperson may confirm that each participating grand juror is able to see and hear the prosecuting attorney, the witnesses, and the other grand jurors.

⁹ See OCGA §15-12-66 (a). See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020).

- A process for the presentation of evidence whereby the foreperson or prosecuting attorney may ensure that each participating grand juror is able to participate fully, including by asking questions of any witness.
- A process for grand jurors to observe and inspect any non-documentary evidence that cannot be shared with grand jurors through the document-sharing application.
- A process for deliberations whereby the foreperson may ensure that each participating grand juror is able to participate fully.
- A process for voting whereby the foreperson may ensure that the vote of each participating grand juror is accurately counted.
- The procedure for sealing and returning indictments in open court. This guidance does not suspend or alter the law requiring the return of indictments in open court. See *State v. Brown*, 293 Ga. 493 (2013).

In connection with the preparation of this written protocol, the chief judge must consider whether grand jury proceedings conducted pursuant to the protocol will meet all legal requirements for grand jury proceedings, including that the protocol reasonably assures grand jury secrecy. If the chief judge is satisfied that the protocol assures the lawful conduct of grand jury proceedings remotely, the chief judge should enter an order incorporating and adopting the written protocol.

Best Practices for Remote Grand Jury Proceedings

The following are recommended as best practices for remote grand jury proceedings:

1. To the extent permitted by public health conditions, the availability of suitable facilities, and technology resources available to the court, a form of remote grand jury proceedings in which grand jurors are physically located within the courthouse or one or more other public buildings, but dispersed in small groups or individually to multiple

locations within those buildings, is generally preferable. Such a form enables the court to better secure the physical locations from which grand jurors participate remotely in grand jury proceedings, so as to reasonably assure grand jury secrecy; potentially avoids technical complications that may arise when grand jurors participate remotely from other locations; and places the grand jurors near IT personnel in the event that technical support is necessary.

2. If it is not feasible or advisable for all grand jurors to be physically located in the courthouse or one or more other public buildings during remote grand jury proceedings, it is recommended that the foreperson, and perhaps the assistant foreperson and secretary as well, participate in such proceedings from a location in the courthouse, to the extent permitted by public health conditions. The physical presence of the foreperson at the courthouse allows the prosecuting attorney and witnesses to appear before the grand jury in the physical presence of the foreperson; allows the foreperson to administer oaths to the witnesses in person; allows the foreperson to seal and readily deliver indictments to the bailiff; allows the foreperson to be present for the return of indictments; and places the foreperson, assistant foreperson, and secretary near IT personnel in the event that technical support is necessary.

3. To the extent permitted by public health conditions and the availability of suitable facilities, the prosecuting attorney, witnesses, and other persons authorized to be present for the presentation of evidence to a grand jury should appear in person before the foreperson and should have access to the video-conferencing application used for remote grand jury proceedings only in the presence of the foreperson.¹⁰ Rather than allowing the prosecuting attorney, witnesses, and others to participate in the remote grand jury proceedings with their own devices, security and grand jury secrecy are promoted by requiring these persons to access the video-conferencing application with one or more devices set up for the use of such persons in the room in which the foreperson is located. This

¹⁰ To the extent that such other persons appear in person in the physical presence of the foreperson, their appearance must comport with public health guidance and the previously-issued Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020).

practice enables the foreperson to ensure that such persons are excused from the location in which the foreperson is present□ and that they, therefore, no longer have access to the video-conferencing application□ prior to the commencement of deliberations, better assuring grand jury secrecy.

4. Prior to the commencement of remote grand jury proceedings, the presiding judge should deliver a modified charge to the grand jury, instructing the grand jury about special issues that may arise from the remote conduct of the proceedings, including measures to reasonably assure grand jury secrecy, what steps should be taken in the event of a breach of grand jury secrecy, what should be done in the event that a grand juror has a technical problem with the video-conferencing or document-sharing application, and what should be done in the event that an emergency arises or a grand juror otherwise needs to leave the proceedings early. The content of such a modified charge should be adjusted to fit the particular form of remote grand jury proceedings that is employed. Among other things, if any grand juror may participate remotely in grand jury proceedings from their own place of residence or another private place of their choosing, the grand jury should be instructed about the need for grand jurors to participate remotely in a secluded location within such private place and that all grand jurors participating remotely must be physically located within the geographic jurisdiction of the court.

5. Each grand juror should be given a phone number at which they can contact the foreperson during remote grand jury proceedings in the event of a technical problem or emergency.

6. It is recommended that the foreperson, assistant foreperson, or secretary be designated as the person to host or otherwise control the video-conferencing application during remote grand jury proceedings and that the foreperson, assistant foreperson, or secretary receive technical training on the use of the video-conferencing application prior to the commencement of remote grand jury proceedings. To allow a prosecuting attorney, clerk of court, judicial staff, or IT personnel to control the video-conferencing application would arguably suggest a breach of grand jury secrecy.

7. Because participants may be especially fatigued by video conferences—more so than by meetings in person—regular breaks should be scheduled for snacks, for the use of restrooms, and for grand jurors to attend to personal issues that may have arisen during the remote proceedings.

8. Throughout the remote proceedings, the foreperson should, from time-to-time, confirm that the grand jurors are encountering no technical difficulties and can see and hear the prosecuting attorney, the witnesses, the other grand jurors, and the evidence being presented.

9. It is important to ensure that all grand jurors are given a fair opportunity to ask questions, and before releasing a witness, the foreperson should confirm that no grand jurors have additional questions for the witness.

10. It is important that all grand jurors have a fair opportunity to participate in deliberations and that their vote is recorded, and special care should be taken to mitigate the risk that the remote nature of the proceedings might impede full deliberations and accurate voting. Before concluding deliberations, the foreperson should confirm that no grand jurors have additional comments. And to ensure that all votes are recorded accurately, the foreperson should consider requiring some affirmative act by each grand juror to cast a vote, whether by voice, visible hand signal, or otherwise.

October 26, 2020

APPENDIX

Helpful Resources for Remote Grand Jury Proceedings

[Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 \(Sep. 10, 2020\)](#)

[Guidance for Resuming In-Person Grand Jury Proceedings \(Sep. 10, 2020\)](#)

[Potential Constitutional and Statutory Issues with Virtual Grand Jury Proceedings \(Memorandum from Michael B. Terry, Esq. to Justice Blackwell, Aug. 24, 2020\)](#)

[Virtual Grand Jury Pilot Program \(New Jersey Courts Jul. 27, 2020\)](#)