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Brought to you by The Montana Citizens Council On Judicial Accountability



In *Hale v Henkel*, 201 U.S.43 (1906) The United States Supreme Court states that the Independent Grand Jury's purpose is not only to investigate possible criminal conduct, but to act as a "protector of citizens against arbitrary and oppressive governmental action", and to perform its functions. The independent Grand Jury "deliberates in secret, and may determine alone the course of its inquiry."

Thank you for taking the time to learn the facts about 'Grand Jury' in the State of Montana. We promise that after you learn these legal principles about Grand Jury you will find a sense of relief that there is indeed an answer to stem the corruption and bullying plaguing our governments today.

It comes down to bringing public awareness and educating citizens to understand the VALUE of their Rights, YOUR Rights, and what is at OUR disposal.

When we go into the practical operations of a county Grand Jury, and discover the power that we ourselves have to end this nightmare through a Grand Jury, it's like the blind man being able to see. A whole new world will open up to us, We The People.

After you review this brief information you will see and understand the need to bring forth a slight Montana Constitutional amendment through a legislative referendum, and to subsequently amend our Grand Jury law to create an easier path to impanel a Citizens Grand Jury.

We have provided links in this information to take you directly to the Montana Constitution and the Montana Code Annotated to see precisely where the Articles and Titles are that are pertinent to Grand Jury and this discussion.

The use of our Grand Juries will begin the due process of clearing the criminals out of our government and our courts. Those servants that cannot adhere to our laws, ethics, and Constitution will be removed. No more cronyism or hiding behind frivolous immunity laws which were originally created, by our lawmakers, with the intent to protect servants from *honest* mistakes, NOT a green light to behave nefariously with impunity as some are doing today.

The late U.S. Supreme Court Justice Anthony Scalia in U.S. v Williams, 1992.

“The Grand Jury requires no authorization from its constituting court to initiate an investigation, nor does the prosecutor require leave of the court to seek a Grand Jury indictment.”

All state and local officers (public servants) are subject to the inquisition of the Grand Jury.

If all Montanans/Americans understood the extent of their power to arrest corruption when they serve on a Grand Jury, the roster of Grand Jury volunteers would include ½ the county residents. That roster is known as ‘Venire Pacias Juratores’, or simply as Venire.

The Montana State Council on Judicial Accountability recently did a short survey of all 56 Montana county clerks of district courts regarding their use (or lack thereof) of Grand Jury in their county. The results are at the end of this tutorial.

I. WHAT IS ‘GRAND JURY’?



Well, to start, a Grand Jury IS NOT a jury in a trial in a courtroom. It is not a jury in an appeal. Please Nix those thoughts or beliefs right now! You are not convicting or acquitting anyone. You are part of a called panel to meet in private and determine if probable cause sufficiently exists to order the county attorney/state to charge someone with a crime.

A Trial Jury (petit jury) consists of 12 people and takes a unanimous verdict to convict.

A Grand Jury consists of 11 people and it takes 8 to 'indict'.

The Grand is divided into two parts: The Chief judge (the foreperson) and the panel of all other judges (jurors). Together they (you) are known as the tribunal or, The Grand Jury.

In every county courthouse you will find a special chamber with a placard reading 'Grand Jury Room' for the exclusive use of any Grand Jury panel convening within that state judicial district. This chamber is The People's Office, in The Peoples Building!



A Grand Jury is a special group of citizens in a county, called and empowered by the Montana Constitution and law, to conduct private, open ended legal proceedings, investigate potential criminal conduct, and determine whether criminal charges should be brought, called an indictment, or a 'True Bill'. It is completely separate from the courts which *cannot* preside over its functioning.

The Grand Jury IS known as 'The people's panel' or 'The court of inquiry'.
The Grand Jury IS an institution of We The People, NOT our civil servants.

It is the People's sword and shield because it WORKS for the People to arrest evildoers and to PROTECT any individual against corrupt, vindictive and overzealous governments.

Citizens impaneled on Grand Jury are top of the pecking order, not judges or attorneys!

WE THE PEOPLE have the authority and lawful power to arrest corrupt actors.
WE THE PEOPLE have not arrested government criminals because most of us *don't realize we CAN! Well.....Now you DO!*

The Grand Jury is a legal, singular and separate, independent governmental quasi-judicial and enforcement entity. It is not constitutionally assigned to ANY of the other 3 branches NOR be controlled by them.

And....it is one of the best kept secrets in our Blessed Republic to quell the corruption occurring in our government and judiciary. We The People have the authority and lawful power to arrest corrupt actors and end the hijacking of our court system.

The Grand Jury can investigate merely on suspicion that the law is being violated, or even because it simply wants assurances that it is not! It need not identify the offender it suspects or even the precise nature of the offense it is investigating. The Grand Jury requires NO authorization from it's constituting court to initiate an investigation, nor does the prosecutor require Leave of the court (permission) to seek a Grand Jury Indictment if it's impaneled. The Grand Jury remains free to pursue it's investigations unhindered by external influences or supervision (i.e. the judge or prosecutor or....)

II. OUR CONSTITUTION AND CODES (LAWS).

Our [Montana Constitution](#) has a Preamble and 14 "Articles".

Our [Montana Code Annotated](#) has "Titles" which define our laws (statutes).

First, let us begin with our Montana Constitution, Article II, Part II, Section 20 which establishes that We The People have the Constitutional right to a Grand Jury.

ARTICLE II. Declaration of Rights. [LINK](#)

PART II. Declaration of Rights.

SECTION 20. Initiation of Proceedings. (1) All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave by the (district) court, OR by indictment without such examination, commitment, or leave.

(2) A Grand Jury Shall consist of 11 persons, of whom 8 must concur to find an indictment. A Grand Jury shall be drawn and summoned only at the discretion and order of the district judge.

Secondly, we go to our Montana Code Annotated (laws) where there are 3 classifications of juries defined in Title 3, Chapter 15, Part 1, section 2 (MCA 3-15-102): [LINK](#)

TITLE 3. Judiciary, courts.
CHAPTER 15. Juries and Jurors.
PART 1. Juries - - Definition and composition.
SECTION 2. Kinds of Juries. Juries are of 3 kinds.

- 1) *Grand Juries*;
- 2) Trial Juries;
- 3) Juries of inquest.

Furthermore following, in section 3, it then defines our Grand Jury:
3-15-103. Grand Jury defined. A Grand Jury is a body of persons, 11 in number, returned as provided by law from the citizens of a county before a court of competent jurisdiction and sworn to inquire into public offenses committed or triable within the county. [LINK](#)

Additionally, Grand Jury is drawn from our Constitution and included within our Montana Code Annotated (laws) under Title 3, Chapter 15, Part 6, Section 1 (MCA 3-15-601): [LINK](#)

TITLE 3. Judiciary, courts.
CHAPTER 15. Juries and jurors.
PART 6. Grand juries.
SECTION 1. When and how drawn and summoned. Whenever in the opinion of the district court judge a Grand Jury is necessary, the judge shall make an order directing a Grand Jury be drawn and summoned to attend before the court.

And lastly, in Title 46, Chapter 11, Part 3, Section 1 (MCA 46-11-301): [LINK](#)

TITLE 46. Criminal procedure.
CHAPTER 11. Commencement of prosecution.
PART 3. Grand Jury.
SECTION 1. Summoning a Grand Jury. A Grand Jury may only be drawn and summoned when the district judge, in the judges discretion, considers a Grand Jury to be in the public interest and orders the Grand Jury to be drawn or summoned.

III. DISCUSSION

- 1) 'in the judges discretion';
- 2) 'in the opinion of the district court judge', and;
- 3) 'only at the discretion and order of the district judge'.....

.....are nasty terms because discretion is a hard thing to challenge in court. But, there is a phrase 'abuse of discretion'. This discretion should err on the side of letting We The People investigate plausible criminal activity.

Recall back to Supreme Court Justice Anthony Scalias 1992 opinion:

"The Grand Jury requires no authorization from its constituting court to initiate an investigation.....". This is true. Once a Grand Jury is impaneled it can investigate anything it wishes. The problem is *getting the Grand Jury impaneled!*

As you can clearly see from the Articles and Codes (laws) it takes a district court judge to authorize the impaneling of a county Grand Jury. An investigation cannot commence UNTIL that Grand Jury is seated. Essentially, our judiciary IS controlling our Grand Jury.

HOWEVER:

Grand Jury is not in the body of the U.S. Constitution, but is mentioned in the Bill of Rights (amendment V). THEREFORE, it does not belong to any branch of government. It is a Constitutional fixture in its own right. It is not to be controlled or abused by any other branch of government, nor is it an agency under the auspice direction or control of our judiciary



We The People (our legislatures) created our Constitution and We The People approved it. Since We created it, and approved it, whose job is it to make sure it is obeyed?

Furthermore, our Montana Constitution Article II, Part II, Section 20 makes it PLAIN that the Montana Grand Jury is a child of our Legislature....not of our judiciary.

We, as citizens of Montana, are to have the fundamental right of free access to a Grand Jury. It is a tool available directly to the people or an individual citizen, and is society's most powerful tool against organized crime, corruption in the cities, counties, or state if the crime is committed against the states residents.

We The People have got into this mess of corruption by forgetting that WE, not the supreme court or the state judges, are the last word on the law and our constitution. Our ignorance of the Constitution and the Civic it stipulates has given our public servants the treacherous idea that they are our masters rather than our servants.

We have laws and judicial canon of ethics that prohibit judges from doing anything that might cast doubt on the integrity of the courts. Given a CITIZENS suspicion of wrongdoing, does it not cast serious doubt on the integrity of a judge if s/he refuses to call a Grand Jury??? What does it cost him or her to call one? Nothing!

The Grand Jury is NOT a function of the court system itself. It is an impaneled group of private county citizens (11) to inquest criminal wrongdoing. It is NOT, nor can be, controlled or directed by the court *once it is impaneled*. When you serve on a Grand Jury your "office" is entirely independent of the office of the judge and prosecutors. It is an institution completely separate from the courts over who's functioning the courts DO NOT preside. If the Grand jury has a legal question or concern, THEY can summon the judge or county attorney to answer their question(s). Remember, THEY are the top of the pecking order now.

In Montana, there are TWO WAYS to charge someone with a crime:

The first (and only way WE have been allowing it to occur) is by what is known as "*Affidavit, Motion, and Order for Leave to File Information Direct*".

This is where the police (our servants, usually just one) perform the 'investigation', then submit their 'request for warrant' to the county attorney (our servants, usually just one) who generally fails to even verify the 'information' in said report (a violation of ethics). Many times this report contains false information and is 'shaded' by the police to give the appearance that a crime has been committed.

The county attorney then files the "Affidavit, Motion, and Order for Leave" with the district court judge (our servant) who in essence rubber stamps the document creating the warrant for arrest bringing the charges.

The second is through *an indictment* by a Grand Jury (The Peoples Panel, The Court of Inquiry). The Grand Jury is convened and investigates the facts and allegations *rather than the police*. The Grand Jurors are to be the judges of the law and facts. They are known in the law as "Quasi-judicial officers" and for their term they are, and make no mistake about this, judges. They have full power to subpoena documents, depose witnesses or suspects. Once impaneled it needs no authorization from judges or attorneys. In fact, it is unlawful for a judge or attorney to involve themselves in the proceedings of a Grand Jury unless requested by the foreperson.

The Rights of the community, YOUR community, include an honest government and justice system. Secrecy is the enemy of trust! Enforcement of the rights of community members against usurpation by rogue government servants MUST be addressed.

The Grand Jury IS THE HIGHEST AUTHORITY in the county court system! It is the People's legal body empowered to conduct official, secret inquest's in the county courthouse to investigate potential criminal conduct to determine whether a serious crime may have been committed, and bring criminal charges so that a criminal case may proceed to court (trial by petit jury).

The Grand Jury is possessed with extraordinary inquisitional power. They may, upon nothing more than a rumor, commence their inquiry into an entities (personal or government) conduct in this state. It is a vital 'Peoples check' on all government operations, and that every government office is within the aegis of the Grand Jury, giving the People's Panel an unrivaled ability to suggest public improvements and expose corruption.

There are two significant differences between a criminal trial jury, and the criminal inquest of a Grand Jury.

First, the GJ primary focus is upon the question of whether a crime(s) was committed as opposed to a trial (petit) jury who presumes that a crime has been committed. Unfortunately today, most juries DO presume a crime has been committed. The adage 'Innocent until proven guilty' is moreso claimed than actually believed.

Second, The Grand Jury needs to go only to the question of probable cause to believe that a crime has been committed and that a person or entity accused probably committed, or did commit the act. Upon this probable cause the GJ will issue a bill indictment, AKA a 'true bill', then it goes to a regular jury trial. If they find no probable cause exists then a 'no bill' is issued.

Current Procedure

As previously exhibited our present, and only, method for impaneling a Grand Jury is exclusively "At the discretion or opinion of a Montana district court judge", which of course means, yes indeed, our Grand Jury IS controlled by our judiciary.

If a judge declines/refuses to authorize the impaneling of a Grand Jury upon plausible suspicion of corruption and/or crimes, one recourse is to file an appeal to the supreme court for a "Mandamus", a judicial writ, "an order from a higher court" to do a specific act which that lower court was obligated to do under the law and which is a statutory duty. If our local district judge is recalcitrant and refuses to impanel a Grand Jury, that judge would become the target of an inquiry also.

Matter of factly, the legal industry has attempted to shut down Grand Jury across America, including Montana. There will be resistance to legislation from that profession.

State judges resist impaneling Grand Juries. People will never indict themselves. That's WHY it's a must that we need to change the article and codes on how to authorize and impanel a Grand Jury. Never underestimate the power of a bureaucrat to add his or her power over. As a species, the worst offenders in this category are judges, and the second worst are state's attorneys.

And, it was previously asked that when a credible suggestion is made to a judge about the need for a Grand Jury, does it not then become the duty of that judge to call a Grand Jury? Absolutely.

However, the Federal Rules of procedure recognize the primordial authority of the People over our own inquest's. In Rule 6 we read: (a) Summoning a Grand Jury. (1) In general. When the public interest so requires, the court (judge) MUST order that one or more Grand Juries be summoned.

Article VI, Section 2 of the Constitution: "This Constitution, and the laws of the United States shall be made in pursuance thereof.....shall be the supreme law of the land; and the judge in every state shall be bound thereby.

If a judge obstructs the authorization of a Grand Jury, on this conflict, and on the common law precedent, and on the non-annihilation principle from the declaration of independence, a sheriff or other magistrate should then indeed intervene and impanel a Grand Jury if recourse is exhausted to get a judge to do so.

Any judge may then be suspended or removed for willful misconduct in office including conduct prejudicial to the administration of justice which brings the office into disrepute.

Therefore, Our Montana Constitution and laws, together with amendment V of the U.S. Constitution and Rule 6 establishes a CLEAR duty for a district judge to comply with all such demands for a Grand Jury, or else be the target of an inquest by another grand Jury.

Survey to the clerks of Montana district courts

In September of 2021 the Montana Citizens Council on Judicial Accountability issued a very brief survey/questionnaire regarding Grand Jury to every clerk of all Montana district courts. This survey was emailed to them twice, an initial email followed by a second request. The actual email sent was:

Greetings to you!

We are making an inquiry to each of the 56 Clerks of the District Courts across Montana to inquire about your county Grand Jury.

Grand Juries are authorized by Article II, Part 2, Section 20 of our constitution, and Title 3, Chapter 15, Part 6.

Do you currently have a Grand Jury impaneled and, if not, when was the last time your county did have a Grand Jury called?

Also, do you have a roster of people in your county who have volunteered for Grand Jury service.

I look forward to your response.

Of the 56 clerks contacted, 24 responded (43%). Of those that responded, only 1 recalled having a Grand Jury impaneled “approximately 25 years ago”. None currently have one impaneled. Numerous clerks have been in their respective offices for long periods of time and could not recall a Grand Jury ever being called. None of the clerks offices have any type of a volunteer Grand Jury roster to poll from in the event a Grand Jury is impaneled.

YOU have the authority and duty to serve on Grand Jury, in some capacity, and on a regular basis. YOU have essentially unlimited power to investigate crimes, once seated as a Grand Juror. The Grand Jury is *independent of the court*. If a judge or the county attorney’s office directly attempts to tamper or otherwise influence your Grand Jury panel while you are in evidence collection, witness/suspect depositions, or other investigative methods, that is “Contempt of Grand Jury” and constitutes grounds for a new criminal “Presentment” against that public servant.

In 2023 we will be pushing legislation to improve, and essentially bring back, our Grand Jury system. We invite YOU to contact us to get involved.



