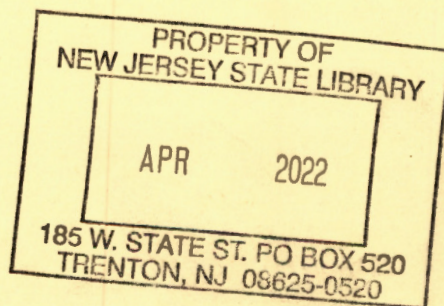


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GRAND JURY:  
COMPARATIVE LAW ANALYSIS

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## I. Introduction

This report is a preliminary survey of state laws concerning: 1) modes of initiating criminal prosecutions for offenses indictable under New Jersey law; and 2) the role of the Grand Jury in investigating official misconduct. Although the United States Constitution guarantees that no one be prosecuted by federal authorities for any "capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury,..."<sup>1</sup> that requirement has never been held binding on the states.<sup>2</sup> In lieu of indictment, due process requires only notice and a pretrial magisterial determination of probable cause if the suspect's liberty is to be restrained.<sup>3</sup> The states have been, and remain, free to devise their own modes of prosecution. New Jersey, of course, adheres rather strictly to the ancient common law notion of a Grand Jury and its functions.<sup>4</sup> As Part II of this report demonstrates, however, New Jersey is in the minority in this respect. Although no state has yet

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1. U.S. Const., Amend. V. E.g., Beck v. Washington, 369 U.S. 541 (1962). The amendment's protection, of course, does not apply to purely statutory offenses, i.e., mala prohibita, which may be prosecuted by information, libel, or any other form of accusatory instrument. See, e.g., Ocampo v. United States, 234 U.S. 91 (1914).
  2. E.g., Hurtado v. California, 110 U.S. 516 (1884). See Lem Woon v. Oregon, 229 U.S. 586 (1913).
  3. Gerstein v. Pugh, \_\_\_ U.S. \_\_\_, 95 S.Ct. 854 (1975). The determination of probable cause need not be made in an adversarial context. Id. at 856 n. 25.
  4. See generally R.D. Younger, The People's Panel: The Grand Jury in the United States, 1634-1941 (1963) (probably the best historical work on American Grand Juries). See also L.D. Clark, The Grand Jury: The Use and Abuse of Political Power (1975) (restricted to federal Grand Juries, excellent critique of investigative functions).

abolished the grand jury as an institution, the majority permit formal accusation by prosecutors' informations.

Furthermore, no other state, except perhaps California, appears as deeply committed to the grand jury as a watchdog on public officials. Although many states require grand juries to investigate public officials and public institutions, only six provide for any grand juries to exercise statewide jurisdiction. (See Part III, infra). None of those, as does New Jersey, require that the statewide grand jury sit continuously. Presumably, those functions are carried out by investigative agencies or commissions. Moreover, four states have abolished presentments or reports, while only five states specifically allow them. At this point, examination of positive law becomes imperative and follows.

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## II. State Constitutional Requirements: Indictments and Informations.

Twenty states, besides New Jersey, retain grand jury indictment as the only permissible mode of initiating felony prosecutions. Thirteen states constitutionally require that all indictable offenses be presented by grand jury indictment. Ala. Const., Art. I. §6; Alaska Const., Art. I., §8; Ark. Const., Art. II. §8; Del. Const., Art. I. §8; Hawaii Const., Art. I. §8; Ky. Const., Bill of Rts., §12; Me. Const., Art. I, §7; Miss. Const., Art. III, §27; N.Y.

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5. Excluding New Jersey.

Const., Art. I, §6; N.C. Const., Art. XXII; Ohio Const., Art. I, §16; S.C. Const., Art. I, §XI; W. Va. Const., Amend. V. Six other states, whose constitutions are silent concerning permissible methods of prosecution, by statute have retained grand jury indictments for all offenses. Ga. Const., Art. 2405; Ga. Code. Ann. §27-504; Mass. Const., Pt. I, Art. XII; Mass. Code, tit. 276, §4; N.H. Const., Pt. I, Art. 5; N.H. Rev. Stat. §601:1; Tex. Const. Art. I, §10; Tex. Code Crim. Pro., Art. I, §10; Tenn. Const., Art. I, §9; Tenn. Code Ann., §17-19-1; Va. Const., Art. I, §8; Va. Code Ann. §19.1-162. Illinois' constitution explicitly permits the legislature to alter or regulate grand juries, but the legislature has specifically declined. Ill. Const., Art. I, §7; Ill. Rev. Stat., tit. 38, §111-3.

In four states, grand jury indictments, either legislatively or constitutionally, have been retained only for capital offenses. Conn. Const., Art. I, §8; Con. Gen. Stat. Ann., §54-46; Fla. Const., Art. I, §15 (a); Fla. Code Crim. Pro., §3.140 (a); Minn. Const., Art. I, §6; Minn. R. Crim. Pro., §17.01; R.I. Const., Art. I, §7.

Twenty-five states permit prosecution by information in all cases. Ten states constitutionally permit all offenses to be prosecuted by information or by indictment. Ariz. Const. Art. II, §30; Calif. Const., Art. I, §14; Idaho Const., Art. I, §8; La. Const., Art. I, §9; Mont. Const., Art. III, §8; Nev. Const., Art. I, §8; N.M. Const., Art. II, §14; Okla. Const., Art. II, §17; Utah Const., Art. I, §13. Seven state legislatures, pursuant to constitutional

permission, have established prosecution upon information. Colo. Const., Art. II, §8 effected in Colo. Rev. Stat. Ann., §16-5-201(a), (b); Iowa Const., Art. I, §11 as amended by Amendment No. 3, effected in Iowa Code, §769.1; Neb. Const., Art. I, §8, effected in N.D.R. Crim. Pro., 7(a); Wash. Const., Art. I, §25 effected in Wash. Code, §10.37.026; Wyo. Const., Art. I, §9 effected in Wyo. R. Crim. Pro. 9.

Additionally, eight other states, whose constitutions are silent as to the mode in which prosecutions may be commenced, judicially or legislatively permit informations. Ind. Const., Art. I, §13, supplemented by Ind. Code, §§9-903(d), 9-904; Kan. Const., Art. I, §10, supplemented by Kan. Stat. Ann., §22-3201; Md. Const., Art. 21, construed in Heath v. State, 85 A.2d 43 (Sup.Ct.Md. 1951); Mich. Const., Art. I, §20, supplemented by Mich. Code Ann., §§28-941, 28.942; Ore. Const., Art. I, §11, supplemented by Ore. Rev. Stat. Ann., §131.010; S.D. Const., Art. VI, §7, supplemented by S.D. Comp. L., §23-2-5; Vt. Const., ch. 1, Art. 10, supplemented by Vt. R. Crim. Pro., 7; Wisc. Const., Art. I, §7, supplemented by Wisc. Stat. Ann., §955.17. Finally, Pennsylvania, in a 1973 constitutional amendment, has delegated to her Common Pleas Courts the task of deciding whether or not prosecutions in each county are to be by indictment or information. Pa. Const., Art. I, §10.

In sum, of the 49 states studied, 29 permit non-capital felonies to be prosecuted by information. Twenty-four permit all offenses to be prosecuted by information. If New Jersey is included, of 50 states, only 21 require indictments for all offenses.

III. Prosecution by Information: Providing a Substitute for the Grand Jury.

Theoretically, the grand jury's basic and most important function is to protect the citizenry from unfounded or malicious prosecutions. This function is corollary to the grand jury's power to either return an indictment or to reject a prosecution. However, commentators have frequently questioned whether the grand jury fulfills this ancient role or whether it is merely a prosecutorial "rubber stamp."<sup>6</sup> Nonetheless, the mere presence of a grand jury within the system of criminal procedure establishes a safeguard that otherwise might not be present. That is, the existence of a grand jury provides one additional procedural step that a prosecutor would otherwise need not take. Yet, the presence of the step, and not of the grand jury as an institution, may suffice to safeguard the rights of the accused and the integrity of the system.

However, just as there is no federal right to an indictment, there is no federal right to any preliminary review of a prosecutor's decision to prosecute. Gerstein v. Pugh, supra.

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E.g., sources cited in note 4, supra. Antell, The Modern Grand Jury: Benighted Supergovernment, 51 A.B.A.J. 153 (1965); Bouding "The Federal Grand Jury", 61 Geo.L.J. 1 (1972); Moley, "The Initiation of Criminal Prosecutions by Indictment or Information", 29 Mich. L. Rev. 403 (1931) (one of the classic articles); Morse, "A Survey of the Grand Jury System", 10 Ore. L. Rev. (Pt.1) 107, (Pt.2) 217, (Pt.3) 295 (1931) (another classic); Shannon, "The Grand Jury: True Tribunal of the People or Administrative Agent of the Prosecutor?" 2 N.M.L. Rev. 141 (1972); Tigar & Levy, "The Grand Jury as the New Inquisition", 24 Mich. S.B.J. 693 (1971). Contra, e.g., Brown, "Ten Reasons Why the Grand Jury in New York Should Be Strengthened and Retained", 22 Record 471 (1967); Dession, "From Indictment to Information--Implications of the Shift", 42 Yale L.J. 163 (1932); Gaines, "Complaints, Informations and Grand Jury Indictments", 41 Chic. B. Rec. 456 (1960). See also Carp, "The Harris County Grand Jury--A Case Study", 12 Hous. L. Rev. 96 (1974) (social science analysis of grand jurors' self-perceptions).

95 S.Ct. at 865. All the federal constitution demands is that a determination of probable cause be made if a person's liberty is restrained prior to trial. Id. Unfortunately, it is not clear from Gerstein, supra,<sup>7</sup> whether detention alone or any pretrial release involves such restraint. Regardless, virtually every state, including New Jersey, does provide for some type of preliminary examination at which probable cause is determined. Obviously, the potential role of such hearings is greater in systems where no grand jury will determine probable cause.

In fact, the probable cause hearing may well be an ancillary benefit of systems which no longer require indictments. First, as a matter of convenience, and indeed logistics, for law enforcement personnel, the abolition of grand jury indictment would mean one less testimonial appearance. Second, for defense counsel, the hearing may provide an opportunity not only for discovery, but also for actual cross-examination of prosecution witnesses. Third, and perhaps most important, the probable cause hearing substitutes the deliberations of a neutral magistrate for those of a body as vulnerable to the passions of the times as the general community.<sup>8</sup> It must be remembered, though, that due process does not require that the probable cause hearing have any binding effect on a prosecutor's decision to prosecute. Gerstein, supra. However, it would seem fairer that a system that substitutes the probable cause hearing for the grand jury indictment should give the former the same effect as the latter. In either case, if prosecution by information is to permitted

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7. But cf. Hensley v. Municipal Court, 411 U.S. 345 (1973).

8. See, e.g., Clark, note 4, supra.

in New Jersey, then the currently existing probable cause hearing will need to assume a more important role. Likewise, more definite rules will need be established concerning the conduct and effect of such hearings. There are several sets of rules which might provide a model for New Jersey hearings, and the remainder of this section is devoted to a discussion of the more complete procedural systems.

A. California: An Adversarial Model.

California permits prosecution of all felonies to commence either by indictment or by information. Const. Art. I, §14; Penal Code §682. No information may be filed unless a magistrate has determined probable cause at a preliminary examination and has "held the defendant to answer" in a court of competent jurisdiction. At the outset, it should be noted that the preliminary examination may be waived. E.g., People v. Conner, 40 Cal. Rptr. 603 (Ct.App. 1964). Penal Code §872. Thus, the filing of the information completes the pre-arraignment process. Obviously, though, the process is initiated by arrest, and it is arrest that provides the initial focus for the California system.

A police officer, immediately after arresting a person, either with or without warrant, must prepare a written complaint. Penal Code §§848, 872. That person must then be taken before a magistrate "without unnecessary delay." Penal Code §849(a). At this "initial appearance," the

magistrate must inform defendant of the entire panoply of rights he is accorded, appoint counsel if defendant is indigent, and fix bail if the offense is bailable. Penal Code §§850 to 858.

At this hearing, if counsel appears and if the offense is a non-capital felony, the court must read the complaint, and may accept a guilty plea. Penal Code §859a. If defendant pleads not guilty, counsel for both parties are to be given a "reasonable time," at least two days, to prepare for the actual preliminary examination. Penal Code §859b. Subpoenas are to be issued at the request of both parties. Id. Capital offenses may not be pleaded to without counsel. Penal Code §859c. If any defendant has appeared without counsel, the court must allow him two to five days to either retain counsel or to have counsel appointed. Penal Code §860.

No specific time is set for continuation of the proceedings, but it would appear that if defendant required five days to procure counsel, and counsel were ready within the allotted two days, the preliminary hearing would be held one week from the date of the initial appearance. It should be noted that the weakness in this regard is that although California grants counsel a minimum of two days for preparation, no maximum time limit other than a "reasonable" one is set.

Returning to the procedure itself, once a date is set for the examination, the examination "must be completed in one session, unless the magistrate, for good cause shown

by affidavit, postpones it." Penal Code §861. The examination may not be postponed for more than two days at a time nor more than six days in all unless defendant so moves or consents. Id. Defendant has the right to be present and to have the State's witnesses cross-examined in his presence. Penal Code §865. At the end of the State's case, the defendant's witnesses must be allowed to testify. Penal Code §866. If, after consultation with counsel, defendant decides to testify, he may. Penal Code §866.5.

The magistrate then must decide whether "sufficient cause" has been shown to hold defendant to answer in a court of competent jurisdiction. See Rogers v. Superior Court of Alameda County, 291 P. 2d 929 (Sup.Ct.Calif. 1956) ("sufficient cause" equivalent to "probable cause"). If no sufficient cause appears, then the court must discharge defendant from custody. Penal Code §871. Otherwise, he must endorse the complaint and order that defendant be held to answer. Penal Code §872. The prosecutor then has 15 days in which to file an information. Penal Code §739. These provisions provide the great advantage of an automatic nolle prosequi but at the same time fail to explicitly determine the circumstances under which the complaint may be reprocessed, if at all. The case law appears to be silent. However, the California system is generally set forth in explicit detail, and provides the model for a number of

other state systems of pre-arraignment procedure. Of course, the system is adversarial and does substitute the probable cause hearing for the grand jury indictment.

B. The Federal Rules of Criminal Procedure: Another Adversarial Model.

As noted, federal felonies may not be prosecuted except upon indictment. However, the Federal Rules of Criminal Procedure provide for preliminary examinations, albeit in less detail than California's Penal Code. Actually, the federal rules resemble the California provisions, but establish some tighter time deadlines. As in California, a federal suspect must be taken before a magistrate without unnecessary delay. F.R. Crim. P. 5(a). Again, he is to be advised of his rights, and provision is made for obtaining counsel. F.R. Crim. P. 5(b). However, the preliminary examination must be held within 10 days of the initial appearance if the defendant is in custody and 20 days if he is not. F.R. Crim.P. 5(c). These time limits may be relaxed only if good cause is shown and if the defendant consents to the relaxation. Id.

At the preliminary examination, defendant may cross-examine the witnesses and may introduce evidence. F.R. Crim. P. 5.1(a). However, either party may introduce hearsay, if the magistrate finds that the hearsay is

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9. Compare, e.g., Idaho Code §§19-501 et seq. and §§19-504 et seq.; Iowa Code Ann. §§754.1 to 769.17; Kan. Stat. Ann. §§ 22-2301 to 2303, 2901 to 2905. Me. R. Crim. Pro. 3,4,5; N.C. Gen. Stat. §§15A-601 et seq.; N.M. Rev. Stat. §§41-6-4 et seq.; Utah Code §77-15-1 et seq.; Wash. R. Crim. Pro. 2; Wisc. Stat. Ann. §954.01 to 955.18.

credible and that a proper foundation will be laid at trial. Id. Then the magistrate must determine probable cause and either discharge the defendant or hold him to answer. F.R. Crim. P. 5.1(c).

Clearly, the Federal Rules provide most of the same procedural forms as do the California rules, but in capsule form. Also, the federal rules are more certain as to time requirements. A few states have adopted provisions similar to the federal procedures, perhaps because of the rules' great flexibility. <sup>10</sup> It must be remembered, however, that the federal rules are designed for a system in which most high-grade crimes are prosecuted on indictment and not information.

C. The Model Code of Pre-Arrestment Procedure (Tentative Draft No. 5, 1972): A Final Adversarial Alternative.

The American Law Institute is in the process of preparing a Model Code of Pre-arrestment Procedure. As the subsection heading indicates, it is still in the preliminary stages. Nonetheless, the Code is sufficiently complete to provide an alternative model for the purposes of this report. The Code resembles both the California and federal provisions, but is more explicit and certain than either. For purposes of description and clarity, it is presumed that the Code,

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10. Compare, e.g., Ariz. R. Crim. Pro. R. 5.1 to 5.6; Colo. R. Crim. Pro. 7; Ind. R. Crim. Pro. 9-701 to 9-704; Mich. Rev. Stat. §§28.855 to 28.931; Minn. R. Crim. P. 5.01 to 5.03; Nev. Rev. Stat. §§171-186 to 171.196; Ore. Rev. Stat. §135.070 et seq.; Wyo. R. Crim. P. 7.

in its entirety, is already in effect in some hypothetical jurisdiction.

A police officer must bring a defendant before a magistrate within 24 hours of arrest, either with or without a warrant. Model Code §310.1(1) (hereinafter cited as M.C.). At this time, the State must produce the warrant and supporting affidavits. M.C. §310.1 2 (a). If the arrest is without warrant, the State must produce an affidavit by the arresting officer or by a prosecuting official, setting forth the facts that led to the arrest. M.C. §310.1(2)(b). The magistrate is then to advise defendant of the nature of the proceeding and of his rights. M.C. §310.1(3), (4). The court must adjourn the matter until defendant obtains counsel or counsel is appointed. M.C. §310.1(5). When defendant appears with counsel or waives it, the court must permit defendant to make a statement, and in exceptional cases, to take evidence. M.C. §310.1(6). It must determine whether reasonable cause exists to believe that defendant committed an offense. Id. Then the court must proceed to fix bail. M.C. §310.1(7). Thereafter, an adjournment may be granted for two days, if the defendant is in custody, longer if he is not. M.C. §310.1(8). No further adjournments may be granted for more than two days. M.C. §310.2(1). At the adjourned session, defendant may present written and testimonial evidence. M.C. §310.2(2). The court may allow hearsay to be admitted if it is credible and a factual basis is shown. M.C. §310.4. The court must

again determine "reasonable cause." Id.

Then, the magistrate must advise defendant of his right to a preliminary hearing, and likewise, his right to waive it. M.C. §§310.5(1), (2). If defendant demands the hearing, it must be held within 10 days if defendant is in custody and within 30 days if he is not. M.C. §310.5(3). The filing of an information will not terminate the right to a hearing. M.C. §330.1. As for the hearing itself, an adjournment of up to one or two weeks may be granted, again depending upon whether defendant is in custody. M.C. §330.2(1), (2).

At the hearing, defendant may move for suppression of evidence on Fourth Amendment grounds. M.C. §330.2(3). However, failure to so move does not result in a waiver, and if the evidence is admitted, the defendant may again move its suppression at trial. Id. A full scale adversarial hearing is then held, at which the rules of evidence apply, except that hearsay is admitted as before. M.C. §§330.4(1) et seq. Cross-examination is permitted, and defendant may introduce evidence. Id. Then the magistrate must determine whether the State has shown reasonable cause to believe that defendant would be found guilty at trial. M.C. §330.5. Defendant is then released or held to answer. Id.

It would appear that the Model Code is the most complete paradigm available. However, the initial appearance may become too much of a full scale hearing to be of pragmatic value. The constant determinations of probable cause may

be unnecessary. There are undoubtedly other problems with the procedure, but its explicitness is its worth. Arizona, Florida, Minnesota, New Mexico, Utah and West Virginia have followed the Model Code in establishing their procedures. See Appendix A. infra.

D. Rhode Island: A Non-Adversarial Model.

Thus far, this report has focused on adversarial probable cause determinations. However, such determinations may be made in a non-adversarial context. See Gerstein, supra. Rhode Island has recently attempted to establish this type of system. There the prosecutor required to attach to his information all exhibits upon which he relies to demonstrate probable cause. R.I. Gen. Laws Ann. §12-12-15. The defendant then has ten days in which to move for dismissal. Id. §12-12-1.6 to 1.7. If defendant does move, the prosecutor is forced to rely on his attached exhibits, unless the court grants leave to supplement. R. I. Gen. Laws Ann., §§12-12-1.5, 1.8. Theoretically, this will diminish the number of occasions on which defendants seek dismissals. See compiler's notes to above sections, quoting R.I. Law Rev. Comm'n Report (1974). In either case, the emphasis is to encourage waiver. Moreover, if the court grants defendant's motion, the State is precluded from again moving the same accusation. R.I. Gen. Laws Ann. §12-12-1.10. Otherwise, the system is less explicit than the

other models. It does provide a model for a potentially non-adversarial procedure, if that is deemed preferable.<sup>11</sup>

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#### IV. The Grand Jury As An Investigative Body.

Regardless of whether prosecution by information is permitted, every state requires that its local grand jury investigate offenses committed within the vicinage. However, in several states which prosecute largely by information, the local grand jury is summoned by the local district's judge at his discretion sua sponte (e.g., "in the interest of justice"), or on petition of a local or state prosecuting official, or on petition of a percentage of the district's registered voters.<sup>13</sup> Again, it would therefore seem probable that inquisitorial or accusatorial proceedings are carried out by the local or state prosecuting official or agency, as would be lengthy investigations.

While these "sometime" grand juries may have no adverse effect on the day to day prosecution of street crime, there may be a serious problem presented by the lack of an effective, vigilant "watchdog" on public officials who may fall prey to organized crime, or who, independently, may constitute, in effect, a criminal

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11. See also Ind. Rev. Stat. §§9-701 et.seq.

12. Excluding New Jersey.

13. E.g., Colo. Rev. Stat. Ann., §13-72-101 (court's discretion); Idaho Code, §19-307; Ind. Ann. Stat., §9-801 to 803; Kan. Stat. Ann., §22-3001; La. Code Crim. Pro., Art. 435; Neb. Rev. Stat., §29-1041(1), (2) (10 % registered voters may petition for grand jury); Nev. Rev. Stat., §6.130; N.M. Stat. Ann., §41-5-1' N.D. Cent. Code, §29-10.1-02(1) (discretion), (2) (county commissioners petition), (3) (10% of registered voters request).

organization. Aside from the possibility of the potential corruption of the law enforcement process, the individual prosecutor, functioning without the compelling subpoena power, may be helpless against other public officials who are suspected of misconduct. Likewise, official conduct which should require lengthy inquiry but does not rise to the level of misconduct, might be ignored. Thus, sixteen states statutorily or constitutionally charge and empower local grand juries to inquire into the public officials, affairs, and institutions within their vicinages. Five states specifically allow grand juries not only to indict but also to present public officials. Fla. Stat. Ann., §105.28; N.Y. Penal Law, Art. 190.85; N.C. Gen. Stat. §15A-628; Utah Code Ann. 77-19-12 (recommendations concerning governmental functions). However, four states have specifically abolished presentments. Ala. Code, tit. 15, §228; La. Code Crim. Pro. Ann., Art. 444; Minn. Stat. Ann., §18.06(3); Neb. Rev. Stat., §29-1407. Additionally, New Hampshire's courts have held that presentments are within the inherent power of its grand juries. Powell v. Pappaginanis, 238 A.2d 733 (Sup.Ct. N.H. 1968).

14. See the President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Organized Crime (1967) pp. 83-91; Grand Jury Ass'n. of New York County, Inc., The People's Big Stick (1963); Kuh, "The Grand Jury 'Presentment': Foul Blow or Fair Play?" 55 Colum. L. Rev. 1103 (1955).
15. This point is made forcefully and in detail in the Task Force Report: Organized Crime, supra, note 8. Of course, there is an inherent potential for abuse, especially in sensitive political areas. See generally, Clark, supra, note 4.
16. Ala. Code, tit. 30, §§76-82; Alaska Stat., §§12.40.030 to .60; Ariz. Rev. Stat. Ann., §21-407; Ark. Stat. Ann., §43-907(2)(3); Cal. Penal Code, §914.1, 919(1) (see also Cal. Gov't Code, §§3060 to 3072; Ga. Code Ann., §771.2(3); Mo. Const., Art. I, §16; Mont. Rev. Stat., §95-1405; N.Y. Crim. Pro. Law, Art. 190.05; N.C. Gen. Stat., §15A-628(5); N.D. Cent. Code, §29-10.1-22(2); S.D. Comp. Laws Ann., §23-30-5; Utah Code Ann., §17-19-1. See also In re Opinions of the Justices, 88 A.2d 128 (Del. Sup.Ct. 1952) (Delaware Grand Jury held to be historic common law body in structure and function).

Three states, in which grand juries no longer function as such "censors," have established "one-man grand jury" procedures to compensate for the limited investigative role now assigned to grand juries. In Michigan, judges of the Superior Court, sua sponte or on motion of the state's attorney, may order an "investigation" on any matter. This essentially replaces the grand jury with the court, and the court exercises both its inherent powers to subpoena, punish contempts, and grant immunity, and also, those same powers as would be exercised by a grand jury. Mich. Rev. Stat. §§28.943 to 28.944. Connecticut has a similar procedure. Conn. Gen. Stat. §54-47 et. seq. In Kansas, a state or local prosecuting official may move before a district judge that the court conduct an "inquisition" into any matter. This resembles the Michigan "investigation" in all respects except that the court apparently may not order such sua sponte. Kan. Stat. Ann., §22-3101 to 3105.<sup>17</sup>

Few states, however, have advanced as far as New Jersey in recognition of the necessity of statewide grand juries in dealing with modern crime and corruption and as a review board for public officials' conduct in general. Only six other states have statewide grand juries, and those are summoned only on motion to a court by either the Governor, the Attorney General, or a local prosecutor. Colo. Rev. State. Ann., §§13-73-101 et seq.; Fla. Stat. Ann., §§905.32 to 905.34 (Gov. petition to State Sup. Ct.; oriented to organized crime and bribery); Mass. Gen. Laws Ann., Ch.277, §1A, 2A (clerk on motion of A.G. may impanel "special grand jury"). See generally, e.g., Scigliano, "The Grand Jury, The Information, and the Judicial Inquiry," 38 Ore. L. Rev. 303 (1959); Winters, "The Michigan One-Man Grand Jury," 28 J.Am. Jud. Soc. 139 (1945); See also In Re Murcheson, 349 U.S. 133 (1955).

jury"); Nev. Rev. Stat. §6.135 et seq. (Governor or legislature may petition district court, or Supreme Court if district court refuses, to empanel); R.I. Gen. Laws Ann. §12-11.1-1; Wyo. Stat. Ann., §7-177.1 (Governor or Attorney General; may petition district court to empanel). Consequently, it would seem that, although many states recognize the need for grand jury investigative action, few have made explicit provision therefor on a statewide scale.

#### V. California: A Model Investigatory System.

If grand juries are no longer necessary for day-to-day accusations, it would seem logical to consider expansion of their investigative role. Currently, New Jersey public officials may be presented for misconduct, but no further action may proceed from the presentment itself. That is, the presentment is of no legal effect. A grand jury may indict, and the public official may be suspended and eventually removed on conviction, but the presentment itself may well be meaningless. While the presentment may provide a further basis for administrative or criminal proceedings, some officials' conduct may be beyond the reach of either. California, however, has theoretically solved the problem.

First, as noted, a California grand jury must inquire into county, district, and housing authority affairs. See note 10, supra. It must inquire into all official misconduct. Penal Code, §919 (a). It must investigate real property in the county for purposes of escheat. Id. §920. It may examine books and records of all public institutions, and investigate and report on the need for increases or decreases

in public revenues. Id. at §§925(a), 927. These provisions, however, are relatively ordinary and have numerous analogues throughout the country.

However, several unique statutory provisions make the California grand jury an even more important safety valve on public affairs and officials. Within one month from the end of the county fiscal year, the grand jury must report to the presiding judge of the Superior Court on all subjects except fiscal affairs. Penal Code, §933(a). The grand jury reports two months thereafter, again to the presiding judge, on fiscal affairs for the preceding fiscal year. Id. at subsection (b). Within 60 days, the county supervisors (i.e., freeholders), and any county or local public officer named in the report, must respond. Id. at subsection (c).

These reports and answers are not simple pro forma affairs, for the California grand jury, unlike its New Jersey counterpart, may take further action. For, with or without report, the grand jury may return an accusation against any district officer for misconduct. Calif. Gov't Code, §3060. The accusation is sufficient to initiate a civil removal proceeding, tried by a petit jury, which may result in a judgment of removal. Gov't Code, §§3070, 3072. Since the action is civil, the burdens and perhaps even the jury vote, are not nearly as difficult obstacles as in a criminal proceeding. Returning to the grand jury, the body itself

18. E.g. Ala. Code, tit. 30, §§76-82; Alaska Stat., §§12.40.050 to 12.40.060; Fla. Stat. Ann., §905.28; Ind. Rev. Stat., §9-824; N.Y. Penal Law, §190.85.

is an important weapon in another manner. Upon motion of the grand jurors and either the district attorney or attorney general, the Superior Court may permit the grand jury to hold public evidentiary sessions in any cases relating to official misconduct. Penal Code, §939.1.

Adoption of these two procedures, the accusation for removal, and the public session, could transform the New Jersey grand jury, and especially the State Grand Jury, into even more awesome forces against official misconduct.

#### VI. Conclusion.

A clear majority of states permit accusation by information for most felonies. A few permit accusation by information in all but capital cases. New Jersey is therefore among the minority of states which retain the grand jury and its indictment for all felonies.<sup>20</sup>

While the Constitution does not require a substitute for the indictment process, it does mandate probable cause determinations in cases where the suspect's liberty is restrained. The practical effect in many states, however, is the substitution of probable cause hearings for indictments. Several potential paradigms are available for structuring a New Jersey Probable Cause hearing should a prosecution by information procedure supersede the indictment. Of the available models, three are adversarial, and one is not.

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20. New Jersey has had a long history of anti-grand jury commentary, all to no avail. Editorial, 29 N.J.L.J. 329 (Nov.1906); 37 N.J.L.J. 97 (April 1914); 45 N.J.L.J. 208 (July 1926); 54 N.J.L.J. 352 (Dec.1931).

However, it has been suggested herein that an adversarial hearing may be fairer and provide more systematic benefits than a non-adversarial proceeding.

If the day-to-day grand jury functions are abrogated, the grand jury as an institution will probably need to be retained for lengthy investigations and to issue presentments. Alternatives are available, but since the current New Jersey grand jury investigative role seems well-suited to the needs of the State, it might best be retained. Perhaps, it might be strengthened in that regard.

In sum, it would appear that the grand jury may no longer be required for day-to-day, street crime types of prosecutions. The probable cause hearing can substitute for the grand jury, and the information for the indictment. Therefore, if change is sought, it can be effected with relative ease, once the requisite constitutional, statutory, and court rule changes are made.

## APPENDIX A

The foregoing report provides a general survey overview of the current status of state grand juries. This overview, however, fails to provide a basis for selective comparisons. Therefore, the within appendix briefly describes the grand jury and preliminary hearing in each state. Some grand juries are described as "common law bodies" and those states, of course, have grand jury systems similar to New Jersey's. Additionally, rather than detailing the probable cause hearing provisions, most states have been classified as similar to one or several of the models used as illustrations in Part III of the report. Finally, it must be remembered that: 1) the explicitness of statutory schemes vary from state to state; and, 2) the object of the appendix is not in-depth analysis, but, rather, brief description.

## ALABAMA

Alabama forbids prosecution by informations in cases involving indictable offense. Const., Art. 1, §8.

The Alabama grand jury consists of 18 members. Code tit. 30, §37. Twelve grand jurors must concur to return a true bill. Code tit. 30, §89. The number of grand juries to be empanelled varies with the size of the county, from 2 in counties with less than 50,000 population to 4 in counties with more than 50,000. Code tit. 30, §72. Grand jurors must take an oath of secrecy. Code tit. 30, §73. The state's attorney "must attend the grand jury when summoned," and apparently may be present during its deliberations and vote. Code tit. 30, §94. Additionally, the grand jury has specific duties relating to investigation of the conduct of public officers, offices, and affairs. Code tit. 30, §§76 to 82. However, the distinction between indictments and presentments has been abolished. Code tit. 15, §228. There is no statutory provision for reports.

Alabama provides for a preliminary hearing which resembles the California model. Code tit. 15, §§119 to 152, 160, 167. No preliminary examination is guaranteed where an arrest is effected pursuant to an indictment. Code tit. 15, §168.

## ALASKA

Alaska's constitution provides that all felony prosecutions be upon indictment returned by a majority of a grand jury. The grand jury must consist of at least 12 members. Additionally, the grand jury power "to investigate and make recommendations concerning the general welfare shall never be suspended." Const., Art. 1, §8.

By statute, grand juries may consist of 18 members. Stat. Ann. §12.40.020. The local prosecutor is to act as counsel. Stat. Ann. 12.40.070. The presiding judge in each judicial district must summon one or more grand juries each year, as frequently as necessary, but at least once. R. Crim. Pro. 6 (a). Grand jurors must swear to keep secret the proceedings. R. Crim. Pro. 6 (b), (h). They may, but need not, hear defendant's evidence in any matter. R. Crim. Pro. 6 (k). Once the grand jury fails to indict on a charge, the matter may not again be investigated, except on court order. Stat. Ann. §12.40.080. The grand jury's constitutional right to present is an affirmative statutory duty. Stat. Ann. §12.40.030, 050,.060. Five members of any grand jury may make a presentment where there is insufficient evidence to prove the elements of a criminal offense or where the statute of limitations has run. R. Crim. Pro. 6 (j).

The Alaska Rules provide for a federal-type preliminary hearing. R. Crim. Pro. 5 (a to d).

ARIZONA

Arizona's constitution mirrors California's in permitting prosecution by information upon a magistrate's probable cause preliminary hearing. Compare Ariz. Const. Art 2, §30 with Calif. Const. Art. 1, §14.

Arizona grand juries are composed of from 12 to 16 members, with 9 constituting a quorum. Rev. Stat. Ann. §21-322. Nine must concur to indict. Rev. Stat. Ann. §21-414. The grand jury in counties with more than 200,000 people must be summoned three times each year. Rev. Stat. Ann. §21-402 (a). In counties with fewer than 200,000 people, the grand jury is to be summoned by the court in its discretion if the public interest requires or on petition of the county attorney. Rev. Stat. Ann. §21-402 (b). The local prosecutor must "attend the grand jurors" upon request, and may also do so, though not requested, to examine witnesses or give legal advice. Rev. Stat. Ann. §21-408 (a). The grand jury may, but need not, hear defendant's evidence. Rev. Stat. Ann. §21-412. The grand jury also has access to all county public records and institutions in the county. Rev. Stat. Ann. §21-407.

Arizona provides an elaborate set of rules for preliminary hearings which follow the model code of pre-arraignment procedure. R. Crim. Pro. 4,5. However, motions to suppress may not be heard at this hearing. R. Crim. Pro. 5.3 (b).

## ARKANSAS

Arkansas permits prosecution by either indictment or information. Const. Art. II, §8 as amended by Amend. No. 21.

Arkansas grand juries have 16 members of which 12 must concur to indict. Rev. Stat. Ann. §§39-217, 43-1002. If the grand jury fails to indict, the charge may be re-submitted only by direction of the court. Rev. Stat. Ann. §43-921. Grand jurors must take an oath of secrecy. §43-927. The grand jury must inquire into the condition and management of public prisons and offices, but there is no provision for the panel to issue a report or presentment. Rev. Stat. Ann. §§43-907, 910, 911.

Prosecutions by information proceed in much the same manner as in California. Rev. Stat. Ann. §§43-601 et. seq. However, Arkansas provisions contain the unique limitation that only five witnesses for each party need be heard unless the attorney swears under oath that more are needed. Rev. State. Ann. §43-607.

CALIFORNIA

This state's procedures have been covered in depth in the body of the report. The size of the grand jury is either 19 or 23, depending upon whether the county population is under or over 4,000,000. Penal Code §888.2. Twelve members of 19, or 14 of 23 must concur to indict. Penal Code §940. However, only 12 are necessary to concur in an accusation against a governmental official. Gov't Code §3060.

## COLORADO

Colorado's criminal prosecutions may be commenced either by indictment or by information Const. Art. II, §8. Rev. Stat. Ann. §16-5-201.

Colorado grand juries are summoned only once every 18 months, by the local district court sua sponte or on motion of the district attorney. Rev. Stat. Ann. §13-72-101. The grand jury consists of 12, 9 of whom must concur to indict, unless the district attorney moves and shows good cause to empanel a 23 member grand jury, in which case 12 indict. Rev. Stat. Ann. §13-72-102. Grand jurors swear to secrecy. Rev. Stat. Ann. §13-72-105. There are no provisions for reports or presentments, but a state-wide grand jury may be summoned by the Chief Judge of the Superior Court. Rev. State. Ann. §73-103.

Colorado provides for preliminary hearings in much the same manner as the Federal rules, but the time sequence appears to resemble the Model Code. R. Crim. Pro. 5, 7

## CONNECTICUT

Connecticut allows all non-capital offenses to be prosecuted on information. Const. Art. 1, §8.

The Superior Court, when necessary, may summon an 18 member panel, of whom 12 must concur to indict. Gen. Stat. Ann. §54-45. The grand jurors must swear to secrecy. Gen. Stat. Ann. §1-25. The remainder of Connecticut's grand jury law is derived from the common law. E.g., State v. Gray, 196 A. 2d 599 (Super. Ct. 1963) (no counsel permitted; defendant may present evidence). See, e.g., State v. Aikins, 216 A. 2d 838 (Super. Ct. 1966). See also State v. Cobbs, 324 A. 2d 234 (Sup. Ct. Err. 1973). Additionally judicial investigations, i.e., "one-man grand juries," are permitted. Gen. Stat. Ann. §§54-46, 54-47.

Connecticut's probable cause hearings resemble none of the models. Time sequences are not contained in the statutes, nor does there appear to be an initial appearance procedure. The only provision governing the probable cause hearing mandates that it be held within a "reasonable time" from initiation of the criminal process, that the rules of evidence apply, and that the defendant plead to the offense. Gen. Stat. Ann. §54-76 a.

DELAWARE

Delaware's constitution mandates prosecution by indictment. Const. Art. 1, §8. Each of the three Delaware counties' grand jury size and requisite vote for indictment is set forth in the article. Id. In New Castle County, 9 of 15 must concur; in Sussex and Kent counties, 7 or 10 must vote to indict. Id.

The Delaware grand jury is unregulated by statute except that its members must swear to secrecy. Code Ann. tit. 11, §1273. In all other respects it exists as an historic common law body. In re Opinion of the Justices, 88 A. 2d 128 (Sup. Ct. 1952).

Delaware provides a preliminary hearing which follows the federal model. Code Ann. tit. 11, §1909. R. Crim. Pro. (J.P. Courts) 2,3,4.

## FLORIDA

All non-capital offenses may be prosecuted on information. Const. Art. 1, §15 (a).

A Florida grand jury of from 15 to 18 persons is to be summoned in the discretion of the circuit court judge. Stat. Ann. tit. 23, §§905 (1), (2). Twelve members must concur to indict. Stat. Ann. tit. 23, §905-24. The State's attorney may be present at all times except during the deliberations and vote. Stat. Ann. tit. 23, §§905. 17 (2), 905.19. The grand jury may present or report as well as indict. Stat. Ann. tit. 23 §905.165. The subject official has 15 days in which to respond to such presentment. Stat. Ann. tit. 23, §905.28. Florida also has provisions for a state-wide grand jury, which is empanelled on petition of the governor to the state supreme court. Stat. Ann. tit. 23, §§905.32 to 905.34. See In re Advisory Opinion to the Governor, 240 So. 2d 473 (Sup. Ct. 1973) (empaneling state wide grand jury held to be mere ministerial act).

Florida provides preliminary hearings based generally on the model code. R. Crim. Pro. 3.121 et seq. Of course, the filing of an information no longer vitiates the hearing. Gerstein v. Pugh, supra.

## GEORGIA

Georgia's constitution guarantees only the right to know the nature of an accusation, but indictment by grand jury is established by statute. Const. Art. 2-105. Code Ann. §27-704.

The Georgia grand jury is summoned at each court term. Code Ann. §59-201. It consists of from 18 to 23 members, of whom 12 must concur to indict. Code Ann. §§59-202. The grand jurors must take an oath of secrecy. Code Ann. §59-208. The grand jurors must inspect public prisons, and may inquire into the conduct of public offices, officers, and institutions within the county. Code Ann. §§59-305 to 315, 406. Uniquely, the grand jury may appoint a citizens' committee to do that investigative work. Code Ann. §59-310. However, special presentments are treated as indictments. Code Ann. §27-703. Two returns of "no true bill" bar future prosecutions for the same charge. Code Ann. 27-702.

Additionally, Georgia provides for a preliminary hearing on the federal model, except that the accused must be brought before a magistrate within 48 hours of warrantless arrest and 72 hours of arrest upon a warrant. Code Ann. §§27-208 to 214.

HAWAII

Hawaii retains the right to indictment. Const. Art. 1, §8.

The grand jury consists of from 18 to 23 members, of whom 12 must concur to indict. R. Crim. Pro. 6 (a), (f). The jurors are sworn to secrecy R. Crim. Pro. 6 (c). Otherwise, the grand jury appears to exist as it had at common law. See generally R. Crim. Pro. 6. See also Atty. Gen. Op. No. 68-10.

A preliminary hearing is granted, similar to the federal model. See R. Crim. Pro. 5.

IDAHO

The constitution of Idaho permits prosecution by indictment or information, but if a grand jury returns a no bill, an information may not be filed in the matter. Const. Art. 1, §8.

An Idaho grand jury is summoned only in the local district court's discretion and consists of 16 members of whom 12 must concur to indict. Code Ann. §§2-502, 19-1401. Despite the constitutional prohibition concerning informations where no indictment has been returned, Idaho permits a "no true bill" to be resubmitted to a grand jury on order of the court. Code Ann. §§19-1402, 19-1403.

Idaho's prosecutions by information mandate preliminary hearings which parallel the California system. Code Ann. §§19-501 et seq., 19-801 et seq., 19-1308.

ILLINOIS

Although Illinois' legislature may do away with indictments, that body has retained grand juries and indictments. Const. Art. 1, §7; Stat. Ann. §38-111-2 (a).

Illinois grand juries are summoned for indeterminate periods at least once every 18 months in counties with populations over 1,000,000, and on court order sua sponte or on the attorney general's motion in counties under 1,000,000 but not more than once every 18 months. Stat. Ann. §38-112-3 (a), (b). The grand jury consists of 23, 14 to constitute a quorum, with 12 members concurring to indict. Stat. Ann. §§78-9, 78-16, 78-17. The grand jury is sworn to secrecy. Stat. Ann. §38-112-6. Although it need not, the grand jury may hear defendant's evidence. §38-112-4. The state's attorney must attend the grand jury when summoned by it. Stat. Ann. §38-111-3.

Illinois provides for California-type preliminary hearings. Stat. Ann. §§38-109-1 et seq.

## INDIANA

Indiana's constitution is silent as to permissible modes of prosecutions. Const. Art. 1, §13. Statutes, however, permit felonies to be prosecuted either by indictment or by information. Stat. Ann. §9-904-2.

An Indiana grand jury has 6 members, of whom 5 must concur to indict. Stat. Ann. §§9-801, 9-901. The grand jury is summoned only in the court's discretion. Stat. Ann. §§9-802, 9-803. The grand jurors must take an oath of secrecy. Stat. Ann. §9-807. See also Stat. Ann. §9-816 (general secrecy). The prosecuting attorney may be present at all times except during the deliberations and vote. Stat. Ann. §9-826. The grand jury may inquire into corruption and misconduct in office and into the condition of the county "poorhouses" and prisons. Stat. Ann. §9-824 (1 to 5). No provision permits or forbids presentments or reports.

Indiana's information probable cause procedures resemble Rhode Island's in that there is provision for non-adversary proceedings. Stat. Ann. §9-903. However, there is also a California-type hearing possible, but defendant's initial appearance must occur within 48 hours of arrest. R. Crim. Pro. 9-701, 9-704, 9-704 a.

IOWA

Iowa's constitution permits alteration of the grand jury system, including prosecution on information, and the legislature has so acted. Const. Art. 1, §11 as amended by Amend. No. 3; Informations are allowed. Code §769.1.

The Iowa local grand jury is to be called at the beginning of each calendar quarter. Code §770.1. The grand jury consist of 12, 7 of whom must concur to indict. Id. The grand jury must inquire into the condition and management of the county jails, the willful and corrupt misconduct of public officers, and obstruction of highways. Code §771.2. The prosecutor may be present at all times, except during the vote. Code §§771.5, 771.6. The grand jury may, but need not, hear defendant's evidence. Code §771.15.

Iowa's prosecutions by information closely follow the California model in almost all respects. Code §§757.2, 757.7, 758.1 to 761.18. However, judicial holdings that the filing of an information vitiates the probable cause hearing probably have been invalidated by Gerstein v. Pugh, supra. See State v. Collins, 152 N.W. 2d 612 (Sup. Ct. 1967).

## KANSAS

Kansas's constitution accords only the right to know the nature and cause of an accusation. Const. Art. 1, §10. Prosecution may proceed on either indictment or information. Stat. Ann. §22-3201

The grand jury is summoned by the district court "in the public interest" or on petition of 100 plus 2% of the voters in the last gubernatorial election. Stat. Ann. §322-3001 (1), (2). The grand jury has 15 members, 12 of whom constitute a quorum, and 12 of whom must concur to indict. Stat. Ann. §§22-2001 (3), 22-3011 (1). The grand jurors need not swear to secrecy. Stat. Ann. §§22-3003, 22-3012. The prosecuting attorney may be present at all times except during the deliberations and vote. Stat. Ann. §22-3010. Additionally, Kansas provides for a judicial "one-man grand jury" on petition of the attorney general, assistant attorney general, or a county attorney. Stat. Ann. §§22-3101 to 3105.

Kansas provides preliminary proceedings akin to those in California in information prosecutions. Stat. Ann. §§22-2901 et seq. The compiler's note indicates that the provisions are drawn from Montana Crim. Code 395-1202 and pre-existing Kansas law. However, examination reveals that both resemble California procedures. See Montana, infra.

## KENTUCKY

Kentucky allows only prosecution by indictment except in cases involving "oppression or misdemeanor in office."

Const., Bill of Rts., §12.

Kentucky grand juries are summoned at 3 regular terms of court, or, in courts of continuous sessions, each month.

Rev.Stat. Ann. §29.205. The grand jury consists of 12, nine of whom must concur to indict. Rev. Stat. Ann. §29.005. The grand jurors must swear to secrecy. R. Crim. Pro. §5.03. The grand jury may, but need not, hear defendant's evidence. R.Crim.Pro. §5.08. The prosecuting attorney may attend the grand jury, but may not be present during the vote. R.Crim.Pro. §5.14, 5.18. No provisions exist relating to presentments.

Kentucky provides preliminary hearings which resemble the federal model. R.Crim. Pro. §3.01 et seq.

LOUISIANA

Louisiana permits prosecution by information except in capital cases, which must proceed only upon indictment. Const., art. 1, §9; Code Crim.Pro. art. 382.

The Louisiana grand jury consists of 12, of whom 11 constitute a quorum, and 9 an indicting majority. Code Crim.Pro. arts. 383, 413, 435. See State v. Jack, 255 So.2d 204 (Sup.Ct.1973). The grand jury is summoned at regular intervals but the sequences depend upon the particular parish. Code Crim.Pro., art. 414. The grand jurors must take an oath of secrecy. Code Crim.Pro. arts. 431, 434A. The district attorney or attorney general may be present at all sessions. Code Crim.Pro. art. 433. The grand jury may, but need not, hear defendant's evidence. Code Crim.Pro. art., 442. Presentments are disallowed. Code Crim.Pro. art. 444.

In prosecutions by information, Louisiana procedures follow California's. Code Crim.Pro. arts. 202 to 297.

MAINE

Maine prosecutions proceed upon indictment only.

Const., art. 1, §7.

The Maine grand jury is summoned at each county court term. See Rev.Stat.Ann., tit. 4, §110. The grand jury consists of from 16 to 23 members, with a 12 member majority requisite to indictments. R.Crim.Pro., 6(a),(f). The proceedings are to be kept secret, and the prosecutor may be present except during the vote. R.Crim.Pro., 6(d),(e). There is no provision relating to presentments.

Maine's preliminary hearing provisions are fashioned after the federal rules. R.Crim.Pro., 5.



MARYLAND

Maryland permits prosecution either by indictment or by information. Const., Decl. of Rts., art. 21. See, e.g., Heath v. State, 85 A.2d 43 (Sup.Ct.1951).

The Maryland grand jury system is in a state of flux. Prior to 1973, a statutory grand jury sat in each judicial district. See Md. Code. Ann. tit.51, §1 et seq. However, in 1973 the legislature repealed all the grand jury provisions, and the system reverted to its purely common law origins.<sup>21</sup>

However, Maryland does have explicit provisions for probable cause hearings, which tend to follow the federal rules. See Maryland District Rules 709 [herein after cited as M.D.R.]. The rules grant defendants an absolute right to a probable cause hearing if their prosecution has been initiated by information. M.D.R. 741(a)(2). Probable cause hearings are discretionary where indictments have been returned. M.D.R. 741(a)(3). Additionally, though the defendant may cross-examine prosecution witnesses, the presentation of defense evidence is discretionary, unlike the comparable federal provision. M.D.R. 741(c). Finally, it should be noted that the court rules are more stringent and more solicitous of defendants' rights than the enabling legislation. See Md. Code art. 27, §512.

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21.

Telephone conversation, June 12, 1973, with Maryland State's Attorney for Baltimore City, Legal Assistant assigned to grand jury.

## MASSACHUSETTS

Massachusetts constitution is silent as to the permissible mode of prosecution. Const., pt.1, art. 12. An early case, however, held that indictments are required. Jones v. Robbins, 74 Mass. (8 Gray) 329 (Sup. Jud. Ct.1857) This requirement is now embodied in statute. Ann.L. art, 263, §4.

Grand jurors are required to take an oath of secrecy. Ann.L. art, 277, §5. No other statutory provisions define or describe the grand jury or its duties. Comm. v. Geagan, 159 N.E.2d 870 (Sup.Jud.Ct.1959), cert. den. 361 U.S. 895 (1960); Comm. v. Ventura, 1 N.E. 24, 30 (Sup.Jud.Ct.1936). It is a creature purely of common law. Comm. v. Ventura, supra. However, the superior court clerk, on the request of the attorney general, accompanied by a certificate of public necessity, may empanel a special grand jury for such matters as the attorney general deems necessary. Ann.L. art, 277, §2A. Such special grand juries have the same powers as regular grand juries, but limited to the specific case or cases before them. Comm. v. Favulli, 224 N.E.2d 422 (Sup.Jud.Ct.1967).

Massachusetts provides for preliminary proceedings akin to the federal model. Ann.L. art. 276, §§21 to 42.

MICHIGAN

Michigan permits prosecution by either indictment or information, by statute, for the constitution is silent. Const., Art. 1, §20. Stat. Ann. §§28.441, 28.442.

The Michigan grand jury is summoned by the court every six months. Stat. Ann. §28.447. The grand jury consists of 13 to 17 members, 9 of whom must concur to indict. Stat. Ann. §§28.951 28.963. The prosecuting attorney may be present only when required by the grand jurors, and may not be present during the deliberations or vote. Stat. Ann. §§28.960, 28.962. Michigan provided for the first "one-man grand jury" and retains its judicial investigation provisions. Stat. Ann. §§28.943 et seq.

In prosecutions by informations, Michigan maintains a procedural system which closely resembles that operative in California. Stat. Ann. §§28.860 to 28.933, 28.982.

MINNESOTA

Minnesota permits all non-capital offenses to be prosecuted without indictment. Const., art. 1, §6. R.Crim.P. 17.01.

Minnesota's local grand jury is summoned annually, if the "public interest" so requires, or, if the prosecutor requests a summoning. R.Crim.Pro. 18.01. The grand jury is composed of from 16 to 23 members, of whom 16 constitute a quorum and of whom 12 must concur to return a true bill. R.Crim.Pro. 18.01, 18.03, 18.07. Grand jurors must take an oath of secrecy. R.Crim.Pro. 18.08. Attorneys for the state may be present during the sessions, but not during the deliberations or vote. R.Crim.Pro. 18.04. The grand jury's duties are not explicitly set forth, other than to inquire into all public offenses in the district. R.Crim.Pro. 18.01. Presentments have been abolished. R.Crim.Pro. 18.06(3).

Minnesota's informations are prosecuted initially in the same manner as provided by the federal rules. R.Crim.Pro. 2.01 to 5.03. However, the preliminary examination, called an "omnibus hearing," resembles the model established in the model code of pre-arraignment procedure. R.Crim.Pro. 7.01 to 11.09. All pre-trial issues are to be determined at the hearing, including both probable cause and Fourth Amendment issues. R.Crim.Pro. 11.02, 11.03. Additionally, the prosecutor must give notice of his evidence on or before the date of the initial appearance. R.Crim.Pro. 7.01.

MISSISSIPPI

Mississippi's Constitution requires indictments for all offenses. Const., art III, §27.

Mississippi's grand jury is summoned at court terms. Stat. Ann. §13-5-26. The grand jury consists of from 15 to 20 members, 17 of whom are necessary to indict. Stat. Ann. §§13-5-41, 99-7-11. The grand jurors are sworn to secrecy, the prosecutor may not be present during deliberations or vote. Stat. Ann. §13-5-61. The grand jury must inspect prisons, investigate county offices, and examine county books and accounts. Stat. Ann. §§13-5-55 to 59.

Mississippi appears not to have a preliminary examination procedure in its court rules or statutes.

## MISSOURI

Missouri permits all felonies to be prosecuted by indictment or information. Const. Art. I, §17.

The Missouri grand jury is composed of 12 members, 9 of whom must concur to return a true bill. Const. Art. 1, §16. Grand jurors must take an oath of secrecy. Stat. Ann. 540,080. Attorneys for the state may not be present during deliberations or votes of the panel. Stat. Ann. 540.140. There is a specific provision that the grand jury inquire into willfull misconduct in office of public officials and report there upon. Const. Art., §16.

Missouri's prosecutions by information mandate initial appearances which proceed in the same manner as provided in the federal model. R. Crim. Pro. 23.02. The subsequent preliminary hearing must be R. Crim. Pro. 23.05. Thus the latter procedures are fashioned after the California model except that either the accused or the prosecution may obtain 10 day postponements for good cause. R. Crim. Pro. 23.06.

MONTANA

Montana permits prosecution by either indictment or information. Const. Art. III, §8.

The Montana grand jury is composed of 11 members, 8 of whom must concur to return a true bill. Code §95-1405. Grand jurors must take an oath of secrecy. Code §95-1404. Attorneys for the state may be present during the sessions but not during deliberations or vote. Code §95-1406. The grand jurors' duties are to investigate public offenses, prisons and the willful or corrupt misconduct in office of public officials. Code §95-1405. No specific provision, however, is made for presentments or reports.

Montana also provides for an adversary preliminary examination to determine if probable cause exists before the county attorney files an information. Code §95-1202. Alternatively, the county attorney may by-pass the preliminary examination by applying to the district court for leave to file an information. Code §95-1202. Thus the procedure resembles the Rhode Island model. Mont. Code 95-1301.

## NEBRASKA

Nebraska requires that all felonies be prosecuted on presentment or indictment. However, a specific provision grants power to the legislature to permit informations and to, by law, regulate or abolish the grand jury. Const. Art. 1, §10.

The Nebraska grand jury has not been abolished but its role is not clear. Its common law composition has been retained. Rev. Stat. §29-1401.

The legislature has provided for prosecution by information, requiring however that such filing be preceded by a preliminary examination of the accused. Rev. Stat. §29-1607. See also Bird v. Sigler, 241 F. Supp. 1007 (1964). The statutes do not elaborate on the procedures to be followed at the hearing. But see State v. Sheldon, 138 N.W. 2d 428 (1965), where the proceedings were viewed as a procedural safeguard to prevent a person from being detained in custody without probable cause. Thus, the procedures cannot be classified according to the models.

NEW HAMPSHIRE

New Hampshire requires only that a full statement of charges be necessary to initiate a prosecution. Const. Pt.1,art. 15.

By statute, though, indictments are required in felony prosecutions. Rev. Stat. Ann. §601:1. The grand jury is apparently a pure common law body, with little constitutional or statutory bases. See, e.g., Powell v. Pappagianis, 238 A. 2d 733 (Sup. Ct. 1968); State v. Canatella, 72 A.2d 507 (Sup. Ct. 1950). All that is set forth by statute is the oath of secrecy and the method of empaneling the grand jury. Rev. Stat. Ann. §§600:3; 601:1 et. seq.

However, the State Supreme Court has held that, as at common law, the grand jury may present as well as indict. Powell v. Pappagianis, supra.

The statutes provide for preliminary hearings, which resemble the federal model. Rev. Stat. Ann. §§5-94:19-1; 596:A-1 et. seq.

NEW MEXICO

New Mexico permits felony prosecution by indictment or information. Const. Art II, §14.

The New Mexico grand jury is composed of 17 members, 12 of whom must concur to return a true bill. Const. Art. II, §14. The grand jury is empowered to investigate any public offense and the condition and management of the public jails. An indictment or a report may issue from such investigation. Stat. Ann. §41-5-11.

New Mexico requires that an adversary preliminary examination precede prosecution by information. Const. Art. II, §14; Stat. Ann. §41-23-20. The procedure follows that of the Model Code, Stat. Ann., §§41-23-1 et seq. but the New Mexico time limits are somewhat more stringent.

NEW YORK

New York requires that all felonies be prosecuted on indictment. Const. Art. I, §6.

The New York grand jury is composed of 16 members 12 of whom must concur to return a true bill. Crim. Pro. L. §190.05. Grand jurors must take an oath of secrecy. Attorneys for the state may be present during the sessions, but not during deliberations or vote. Crim. Pro. L. §190.25. The grand jury may, but it is not required to hear defendant's evidence. Crim. Pro. L. §190.50. Further, the grand jury has broad powers to consider official misconduct, whether or not that misconduct rises to the level of criminality. Crim. Pro. L. §190.05. Corollary to this power of public official enquiry, any grand jury may file a report recommending disciplinary action or removal of a public official. Crim. Pro. L. §190.85.

Additionally, New York provides for an adversary preliminary hearing to determine "whether reasonable cause" exists to detain as pending grand jury action. Crim. Pro. L. §180.10 to 180.70. This resembles the federal model, except that a defendant must be released within 72 hours from the time of arrest unless a preliminary hearing has been held and "reasonable cause" found.

NEVADA

Nevada permits prosecution by presentment, indictment or information Const. Art. I, §8.

The Nevada grand jury is composed of 17 members, 12 of whom must concur to return a true bill. Rev. Stat. §6.120. Specific provisions are made for a grand jury to investigate state affairs. Rev. Stat. §6.135.

A district judge must impanel the state grand jury at the request of the legislature and the governor. A unique provision states that the panel may issue a presentment, which is a lesser finding than an indictment, and in that case an accused must be brought before a magistrate in the same manner if upon an arrest warrant. Rev. Stat. §12.285.

Nevada provides for an adversary preliminary hearing to determine if probable cause exists to hold an accused for trial. Rev. Stat. §173.035. This resembles the federal model except that the magistrate must hold the hearing within 15 days following arrest. Rev. Stat. §171-196. If after the preliminary examination the accused is discharged the prosecutor still may petition the court for leave to file an information. Such petition must contain affidavits of witnesses. Rev. Stat. §173.035.

NORTH CAROLINA

North Carolina requires that all felonies be prosecuted by indictment. Const., Art. 1, §§22.

The North Carolina grand jury is composed of 18 members, 12 of whom must concur to return a true bill. Gen. Stat. §15A-622.

In addition to inquiring into felonies, the grand jury must inspect jails and may inspect other county officers and report to the court on their findings. Gen. Stat. §15A-628.

Additionally, North Carolina provides for an adversary preliminary hearing to determine if probable cause exists to hold accused for the grand jury proceedings. Gen. Stat. §15A-611. This hearing resembles the federal model except that it must be held within 96 hours following arrest. Gen. Stat. §15A-601.

NORTH DAKOTA

North Dakota requires that all felonies be prosecuted by indictment. However provision is made for the legislature to change, regulate or abolish the grand jury system. Const. Art. 1, §8. Prosecution by information is permitted by court rule. R. Crim. Pro. 7.

The North Dakota grand jury is composed of not less than 8 and not more than 11 members of whom 6 must concur to return a true bill. N.D.R. Crim. Pro., 29-10.11-01. The grand jury may be called by the judge of the District Court, sue sponte or if the Board of County Commissioners requests him to do so or if 10% of the electors petition him to do so. R. Crim. Pro. 29-10.1-02. The grand jury must inquire into the willful and corrupt conduct of public officials and must also examine the condition of the county prisons.

The preliminary hearing is an adversarial one, fashioned after the Federal Model. R. Crim. Pro., R. 5.1.

OHIO

Ohio requires that all felonies be prosecuted on indictment. Const. Art. 1, §10.

The Ohio grand jury is composed of 9 members, 7 of whom must concur to present a true bill. R. Crim. Pro. 4. Jurors are sworn to secrecy. Rev. Code, §§2939.06.

The prosecuting attorney may not be present during deliberations or vote. Rev. Code, §2939.10. In addition to investigating public offenses, the grand jury must visit the county jail once during each term and report on the conditions there. Rev. Code, §§2939.21.

Ohio additionally specifies that persons accused of felonies be given preliminary hearings which follow the federal model, except as to time limits which follow the Model Code. R. Crim. Pro. 5.



OKLAHOMA

Oklahoma permits prosecution by indictment or information. Const., art. II, §17.

The Oklahoma grand jury is composed of 12 members, 9 of whom must concur to return a true bill. Const., Art. II, §18. The grand jurors are sworn to secrecy Stat. Ann. tit.22, §325. Attorneys for the state may be present during the sessions but not during the deliberations or votes. Stat. Ann. tit.22, §340. In addition to inquiring into crimes, the grand jury must inquire into the condition and management of the public prisons and into the willful and corrupt misconduct in office of public officers. Stat. Ann. tit.22, §338. If an indictment does not issue from an investigation, the grand jury may make a formal written report. Stat. Ann. tit.22, §346.

Oklahoma requires that all felony prosecutions by information must be preceded by a preliminary examination. Const., art. III, §17. Oklahoma's preliminary hearing is fashioned after the federal model. Stat. Ann. tit.22, §258.

## OREGON

Oregon's constitution only requires that the accused know the nature and cause of an accusation. Const., Art. 1, §§11. By statute, though, indictments are required in felony prosecutions. Ore. Rev. Stat. tit. 14, chap. 131.

Oregon's grand jury is composed of 7 members, 5 of whom must concur to return a true bill. The grand jurors are sworn to secrecy, the State's attorney may not be present during deliberations or votes. Ore. Rev. Stat. §132.010 to §132.360. In addition to inquiring into crimes, the grand jury must inquire into correctional facilities and juvenile training schools within its jurisdiction at least once a year. Ore. Rev. Stat., §132.440. No specific statutory authority either permits or forbids presentments.

Oregon also provides an adversary preliminary hearing for those accused of felony offenses. This hearing to determine probable cause functions solely to hold the accused for action of the grand jury, and the hearing must be held within 5 days following arrest. Ore. Rev. Stat. §135.070. The proceedings follow the federal model.

PENNSYLVANIA

Pennsylvania permits prosecution of indictable offenses on information if the County Court of Common Pleas, with the approval of the Supreme Court, establishes such system by rule. Const., Art. 1, § 10.

Pennsylvania's grand jury is composed of from 15 to 23 members, 12 of whom must concur to return a true bill. R. Crim. Pro. 200. The grand jurors are sworn to secrecy. R. 206. The State's attorney may not be present during the deliberations and vote of the jury. R. Crim. Pro. 209.

Pennsylvania provides for an adversary preliminary hearing fashioned after the federal model. See R. Crim. Pro. 140, 141.

RHODE ISLAND

Rhode Island has been covered in depth in the body of this report.

However, its grand jury has not been abolished and retains its common law composition. Provision is made for a state-wide grand jury, in addition to a county-wide one, with the power to investigate and return indictments for crimes committed anywhere within the state. Gen. Laws Ann. §12-11.1, 12.11.1-1.

SOUTH CAROLINA

South Carolina requires felony prosecution by indictment.  
Const. Art. 1, §11.

The South Carolina grand jury consists of 18 members, 12 of whom must concur to return a true bill. Const. Art. 5. The duties of South Carolina grand juries are apparently those as existed at common law.

South Carolina provides a preliminary examination, but the procedures to be followed at the hearing are not made explicit in the statutes or cases. Code §43-231. The burden is on the accused to make a timely demand for the hearing. Code §43-231. The validity of this provision is dubious after Gerstein v. Pugh, supra.

SOUTH DAKOTA

South Dakota requires only that the accused have the right to demand the nature and cause of the accusation against him. Const., art. VI, §7. Prosecution by indictment or information is permitted by statute. Comp.L. 23-27, §5.

The South Dakota grand jury is composed of 6 to 8 members, 5 of whom must concur to return a true bill. Comp.L. §23-30-1 to 23-30-5. The duties of the grand jury are to inquire into public offenses, the conditions and management of prisons and the misconduct of public officials. Id. Additional provisions permit formation of a special grand jury for unspecified, atypical cases. Comp.L. §23-29-16. Likewise, a special grand jury is to be impanelled to consider charges against the state's attorney. Comp.L. §23-30-8.

South Dakota information prosecutions provide for adversary preliminary hearings fashioned after the federal model. Comp.L. §23-27-4. In addition, there is a specific requirement that the hearing be held no later than 6 days after arrest unless by consent of the accused. Comp.L. §23-27-5. If the hearing results in a finding of probable cause, the state's attorney may file an information. Id.

## TENNESSEE

Tennessee's constitution specifies only that the accused has the right to demand the nature and cause of the accusation against him. Const., Art. I, §9. However, it is required by statute that prosecutions be initiated by indictment. Code, §40-1605.

The Tennessee grand jury is composed of 12 members all 12 of whom must concur to return a true bill. Code §§40-1501 and 40-1707. In addition to inquisitional powers over indictable offenses, the grand jury has broad powers to investigate public prisons and other county institutions, the county treasury, the misconduct in office of county officers and obstruction of roads and highways. Code §40-1607. The jurors are sworn to secrecy. Code §40-1611. The District Attorney may be present during deliberations or vote. Code §40-1610.

Tennessee has established a probable cause procedure similar to California's. Code §§ 40-1104, 40-1117.

## TEXAS

Texas requires only that the accused have the right to demand the nature and cause of the accusation against him. Const. Art. 1, §10. However, statutes require that all felony prosecutions be initiated by indictment. Code Crim. Pro. §1.05.

The Texas grand jury is composed of from 15 to 20 members, 9 of whom must concur to return a true bill. Code Crim. Pro. §19.06 and §20.09. The jurors are sworn to secrecy. Code Crim. Pro. §20.02. The State's attorney may not be present during deliberations and vote. Code Crim. Pro. §20.03.

Texas provides for an adversary preliminary hearing based on the Federal Model for all felony charges. Code Crim. Pro. §16.06, 16.07. In addition, Texas requires that the examining judge enters an order within 48 hours following the hearing or there shall be a finding of no probable cause. Code Crim. Pro. §16.7. Thus some aspects likewise resemble the Model Code.

## UTAH

Utah permits prosecution by indictment or information. Const., Art. I, §13.

The Utah grand jury is impanelled through unique proceedings. At least once every two years district courts hold public hearings, and in secret, hear any citizens who have reasons to believe that the law enforcement mechanisms have failed. Code 77-18-1.1. If the Court so finds, it must summon a grand jury. Id. Utah's grand jury is composed of 7 members, 5 of whom must concur to return a true bill. Code §77-20-1. The grand jury must investigate malfeasance in office. Code §17-19-1. However, the grand jury must indict, and may not present, any officials whose conduct is questionable; mere criticism is not permitted. Code §17-19-12. The grand jurors must swear to secrecy, and the State's attorney may not be present during deliberations or vote. Code §§77-19-9, 77-19-10.

Utah's prosecutions by information proceed in a manner akin to the model code. Code §§77-15-1 et seq.

VERMONT

Vermont's constitution requires only that the accused have the right to demand the cause and nature of his accusation. Const., Chap. 1, Art. 10., Prosecution by information is permitted by statute. R. Crim. Pro. 7.

Vermont's grand jury is composed of from 16 to 23 members 12 of whom must concur to indict. R. Crim. Pro. 6. The judge of the county court shall summon the grand jury on request of the State's attorney, the Attorney General or the Governor. Id. The grand jurors are sworn to secrecy. Id. The State's attorney may not be present during deliberations. Id.

Vermont provides for a probable cause preliminary hearing if the accused has been arrested without a warrant. R. Crim. Pro. 5. Thus before an information is filed, there has been an independant finding of probable cause either before or after arrest. R. Crim. Pro. 4. This procedure resembles none of the models and appears to have been promulgated in contemplation of Gerstein v. Pugh, supra.

## VIRGINIA

Virginia's constitution requires only that the accused has the right to demand the cause and nature of his accusation Const. Art. I, §8. By statute, though, felony prosecutions must be initiated by indictment. Code 19.1-162.

Virginia's grand jury is composed of from 5 to 7 members, 5 of whom must concur to return a true bill. Code 19.1-150. Grand jurors are sworn to secrecy, and the State's attorney may not be present during deliberations. Code 19.1-150 to 19.1-160.

Additionally, if the accused is in custody on a felony charge, Virginia provides an adversary preliminary hearing to determine if probable cause exists. Code 19.1-163.1. This hearing appears to be fashioned after the federal model.

## WASHINGTON

Washington permits prosecution by either indictment or information. Const., art. I, §25.

The Washington local grand jury is composed of from 16 to 23 members, 12 of whom must concur to return an indictment. R.Crim.Pro. 10.28.150. The jurors are sworn to secrecy. R.Crim.Pro. 10.28.050. The prosecuting attorney may attend the sessions, and there is no provision prohibiting his presence at the deliberations or vote. R.Crim.Pro. 10.28.070. The grand jury is to inquire into the management of prisons and official misconduct. R.Crim.Pro. 10.28.110. The grand jury may issue a report concerning public affairs, and the report may be made public on court order. R.Crim.Pro. 10.27.160.

Washington's preliminary hearing system has probably been invalidated by Gerstein v. Pugh. Previously, an information could be filed, and the case tried, without such hearing. See State v. Jefferson, 485 P.2d 77 (Sup.Ct.1971).

WEST VIRGINIA

West Virginia requires prosecution by indictment.

Const., Amend. V.

The West Virginia grand jury is composed of 16 members, 12 of whom must concur to return a three bill. Stat. §52-2-3, §52-2-8. The grand jurors are sworn to secrecy; the State's attorney may not be present during deliberations or votes. Stat. §52-2-3 to §52-2-7.

Even though West Virginia requires indictments, the State maintains preliminary examinations akin to the model code procedures. Code §62-1-1 et seq.

## WISCONSIN

Wisconsin permits prosecution by indictment or information. Const. Art. I, §7.

The Wisconsin grand jury is composed of from 15 to 17 members, 12 of whom must concur to return a true bill. Stat. Ann. §225.10, §255.16. The grand jurors are sworn to secrecy. Stat. Ann. §244.11. The State's attorney may only be present to examine witnesses and give legal advice. Stat. Ann. §255.15. There is no provision concerning a State attorney's presence during deliberation or votes.

Wisconsin provides that no information may be filed without a preliminary hearing. Stat. Ann. §955.18. The hearing resembles that of the federal model. Id.

## WYOMING

Wyoming's constitution retains indictment but permits the Legislature to alter the grand jury system. Const. Art. 1, §9. Prosecution by information is permitted by statute. R. Crim. Pro. 9.

Wyoming's grand jury is composed of 12 members, 9 of whom must concur to return a true bill. Stat. Ann. §7-93. The grand jurors are sworn to secrecy. The State's attorney may not be present during deliberations and votes. Stat. Ann. §7-104. Provision is made for impaneling a statewide special grand jury whenever the attorney general or governor deems it to be in the public interest to do so. Stat. Ann. 7-117.1.

Additionally, Wyoming provides for an adversary preliminary hearing similar to the federal model. R. Crim. Pro. 7. This hearing may precede the filing of an information. Provision is also made for the filing of an information on information and belief. R. Crim. Pro. 9. This procedure is suspect in light of Gerstein v. Pugh, supra.

APPENDIX B

The within appendix reduces the data contained in Appendix A to several basic essentials.

COLUMN	HEADING	KEY
1	State	abbreviation
2	Method of Prosecution (MOP)	I=Indictment only I/I= Informations allowed I/I= Indictments in capital cases
3	Presentments (P)	+ =allowed - =not allowed o =no provision
<u>N.B.:</u> 1) New Hampshire's case law permits presentments 2) Nevada's presentments are akin to arrest warrants.		
4	Probable Cause Hearing Model (PCHM)	C=California F-Federal MC=Model Code RI=Rhode Island
5	Grand jury Size (GJS)	Grand Jurors /indicting majority

<u>STATE</u>	<u>MOP</u>	<u>P</u>	<u>PCHM</u>	<u>GJS</u>
ALA.	I	-	C	18/12
ALAS.	I	+	F	12-18/7-10
ARIZ.	I/I	0	MC	12-16/9
ARK.	I/I	0	C	16/12
CAL.	I/I	+	C	19/12,23/24
COLO.	I/I	0	F,MC	12/9
CONN.	I/I*	0	other	18/12
DEL.	I	0	F	15/9; 10/7
FLA.	I/I*	+	MC	15-18/12
GA.	I	-	F	18-23/12
HAW.	I	0	F	18-12/12
ID.	I/I	0	C	16/12
ILL.	I	0	C	23/12
IND.	I/I	0	C	6/5
IOWA	I/I	0	C	12/7
KAN.	I/I	0	C	15/12
KY.	I	0	F	12/9
LA.	I/I*	-	C	12/9
ME.	I	0	F	16-23/12
MA.	I/I	0	F	16-23/12
MASS.	I	0	F	16-23/12
MICH.	I/I	0	C	13-17/9
MINN.	I/I*	-	F,MC	16-23/12
MISS.	I/I	0	other	15-20/17
MO.	I/I	+	F,C	12/9
MONT.	I/I	0	RI	11/8
NEB.	I/I	0	other	16-23/12
N.H.	I	+	F	16-23/12
N.M.	I/I	+	MC	17/12
N.Y.	I	+	F	16/12
NEV.	I/I	+,other	F	17/12
N.C.	I	+	F	18/12
N.D.	I/I	0	F	8-11/6
OHIO	I	+	F,MC	9/7
OKLA.	I/I	+	F	12/9
ORE.	I	0	F	7/5
PA.	I/I	0	F	15-23/12
R.I.	I/I	0	RI	16-23/12
S.C.	I	0	other	18/12
S.D.	I/I	0	F	6-8/5
TENN.	I	0	C	12/12
TEX.	I	0	F,MC	15-20/9
UTAH	I/I	-	MC	7/5
VT.	I/I	0	other	16-23/12
BA.	I	0	F	5-7/5
WASH.	I/I	+	other	16-23/12
W. VA.	I	0	MC	16/12
WISC.	I/I	0	F	15-17/12
WY.	I/I	0	F	12/9