



Sub. S.B. 218

124th General Assembly
(As Passed by the Senate)

Sen. Jordan

BILL SUMMARY

- Modifies the oath administered to members of a grand jury.
- Specifies that if, on or after the bill's effective date, a court impaneling a grand jury uses the grand juror's oath replaced by the bill instead of the new version of the oath the bill enacts, the court's use of the former oath does not invalidate or affect the validity of the impanelment of the grand jury, any proceeding, inquiry, or presentation of the grand jury, any indictment or other document found, returned, or issued by the grand jury, or any other action taken by the grand jury.

CONTENT AND OPERATION

Foreman of grand jury and oath to grand jurors

Existing law

Existing R.C. 2939.06 provides that, when a grand jury is impaneled (see "**Background**," below), the court of common pleas must appoint one of the members of the grand jury as foreman and must administer, or cause to be administered, to the grand jurors an oath in the following words:

"You and each of you do solemnly swear that you will diligently inquire, and true presentment make of all such matters and things as shall be given you in charge of otherwise come to your knowledge, touching the present service; the counsel of the state, your own, and your fellows, you shall keep secret unless called on in a court of justice to make disclosures; and you shall present no person through malice, hatred, or ill will, nor shall you leave any person unrepresented through fear, favor, or affection, or for any reward or hope thereof, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding."

Operation of the bill

The bill changes the oath that a court of common pleas administers or causes to be administered to grand jurors, as described below, clarifies that the oath must be administered *to each* of the jurors, specifies that, when the oath is so administered to each juror, the juror must respond "I do solemnly swear or affirm," and changes the existing reference to the appointment of a "foreman" of the grand jury to a reference to the appointment of a "foreperson" of the grand jury (R.C. 2939.06(A)).

The bill changes the oath that must be administered to each grand juror so that it reads as follows (R.C. 2939.06(A)):

"Do you solemnly swear or affirm that you will diligently inquire into and carefully deliberate all matters that shall come to your attention concerning this service; and do you solemnly swear or affirm that you will keep secret all proceedings of the grand jury unless you are required in a court of justice to make disclosure; and do you solemnly swear or affirm that you will indict no person through malice, hatred, or ill will; and do you solemnly swear or affirm that you will not leave unindicted any person through fear, favor, or affection, or for any reward or hope thereof; and do you solemnly swear or affirm that in all your deliberations you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, as you shall answer unto God or under the penalties of perjury?"

The bill specifies that if, on or after its effective date, a court impaneling a grand jury uses the grand juror's oath that was in effect prior to the bill's effective date instead of the new version of the oath the bill enacts, the court's use of the former oath does not invalidate or affect the validity of the impanelment of the grand jury, any proceeding, inquiry, or presentation of the grand jury, any indictment or other document found, returned, or issued by the grand jury, or any other action taken by the grand jury (R.C. 2939.06(B)).

Background

Article I, section 10 of the Ohio Constitution states, in relevant part, that:

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand

jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law.

Existing R.C. Chapter 2939. pertains to the selection, impaneling, operation, procedures, and duties of grand juries in each county (Criminal Rules 6 and 7, described in **COMMENT 1** and 2, also pertain to similar grand jury-related matters; they were adopted under the provision contained in Article IV, section 5(B) of the Ohio Constitution that requires the Supreme Court to adopt rules governing practice and procedure in Ohio's courts). One of the provisions of R.C. Chapter 2939., which pertains to the selection of the foreman of a grand jury and the oath to grand jurors, is discussed above in "*Foreman of grand jury and oath to grand jurors.*" A summary of the other relevant provisions of R.C. Chapter 2939., none of which are in the bill, follows:

(1) R.C. 2939.02 specifies that grand juries consist of 15 persons (but see **COMMENT 1**) who satisfy the qualifications of a juror set forth in existing R.C. 2313.42 (see **COMMENT 3**) and, along with R.C. 2939.03 and 2939.031 sets forth the manner of selection of grand jurors.

(2) R.C. 2939.08 and 2939.09 provide that a grand jury's duty is to retire with the officer appointed to attend it and proceed to inquire of and present all offenses committed within the county, and that the prosecuting attorney, assistant prosecuting attorneys, and in certain cases, the Attorney General or a special prosecutor, are to appear before the grand jury to give it information relative to a matter cognizable by it, give it advice upon legal matters, and interrogate witnesses.

(3) R.C. 2939.20, 2939.21, and 2939.23 provide that at least 12 grand jurors must concur in the finding of an indictment (but see **COMMENT 1**), that indictments found by a grand jury must be presented by the foreman to the clerk of the county's court of common pleas, that the court must assign indictments so presented for trial, and that if the grand jury does not find an indictment "against an accused who has been held to answer," the foreman must report that fact to the court of common pleas.

(4) R.C. 2939.18 and 2939.19 provide that no grand juror, officer of the court, or other person may disclose that an indictment had been found against a person not in custody or under bail, before the indictment is filed and the case docketed, except by the issue of process, and that no grand juror may state or testify in court in what manner any member of the grand jury voted or what opinion was expressed by any juror on any question before the grand jury.

COMMENT

1. Criminal Rule 6 provides, in relevant part, as follows:

(A) Summoning grand juries. The judge of the court of common pleas for each county, or the administrative judge of the general division in a multi-judge court of common pleas or a judge designated by him, shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of nine members, including the foreman, plus not more than five alternates.

(B) Objections to grand jury and to grand jurors.

(1) Challenges....

(2) Motion to dismiss....

(C) Foreman and deputy foreman. The court may appoint any qualified elector or one of the jurors to be foreman and one of the jurors to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall upon the return of the indictment file the record with the clerk of court, but the record shall not be made public except on order of the court. During the absence or disqualification of the foreman, the deputy foreman shall act as foreman.

(D) Who may be present. The prosecuting attorney, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(E) Secrecy of proceedings and disclosure. Deliberations of the grand jury and the vote of any

grand juror shall not be disclosed. Disclosure of other matters occurring before the grand jury may be made to the prosecuting attorney for use in the performance of his duties. A grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or typist who transcribes recorded testimony, may disclose matters occurring before the grand jury, other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such matters only when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment has been found against a person before such indictment is filed and the case docketed. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictment except when necessary for the issuance of a warrant or summons. No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(F) Finding and return of indictment. An indictment may be found only upon the concurrence of seven or more jurors. When so found the foreman or deputy foreman shall sign the indictment as foreman or deputy foreman. The indictment shall be returned by the foreman or deputy foreman to a judge of the court of common pleas and filed with the clerk who shall endorse thereon the date of filing and enter each case upon the appearance and trial dockets. If the defendant is in custody or has been released pursuant to Rule 46 and seven jurors do not concur in finding an indictment, the foreman shall so report to the court forthwith.

(G) Discharge and excuse....

(H) Alternate grand jurors....

2. Criminal Rule 7 provides, in relevant part, as follows:

(A) Use of indictment or information. A felony that may be punished by death or life imprisonment shall be prosecuted by indictment. All other felonies shall be prosecuted by indictment, except that after a defendant has been advised by the court of the nature of the charge against the defendant and of the defendant's right to indictment, the defendant may waive that right in writing and in open court.

Where an indictment is waived, the offense may be prosecuted by information, unless an indictment is filed within fourteen days after the date of waiver. If an information or indictment is not filed within fourteen days after the date of waiver, the defendant shall be discharged and the complaint dismissed. This division shall not prevent subsequent prosecution by information or indictment for the same offense.

A misdemeanor may be prosecuted by indictment or information in the court of common pleas, or by complaint in the juvenile court, as defined in the Rules of Juvenile Procedure, and in courts inferior to the court of common pleas. An information may be filed without leave of court.

(B) Nature and contents....

(C) Surplusage....

(D) Amendment of indictment, information, or complaint....

3. Existing R.C. 2313.42, not in the bill, provides that:

Any person called as a juror for the trial of any cause shall be examined under oath or upon affirmation as to his qualifications. A person is qualified to serve as a juror if he is an elector of the county and has been certified by the board of elections

pursuant to section 2313.06 of the Revised Code. A person also is qualified to serve as a juror if he is eighteen years of age or older, is a resident of the county, would be an elector if he were registered to vote, regardless of whether he actually is registered to vote, and has been certified by the registrar of motor vehicles pursuant to section 2313.06 of the Revised Code or otherwise as having a valid and current driver's or commercial driver's license.

The following are good causes for challenge to any person called as a juror:

(A) That he has been convicted of a crime which by law renders him disqualified to serve on a jury;

(B) That he has an interest in the cause;

(C) That he has an action pending between him and either party;

(D) That he formerly was a juror in the same cause;

(E) That he is the employer, the employee, or the spouse, parent, son, or daughter of the employer or employee, counselor, agent, steward, or attorney of either party;

(F) That he is subpoenaed in good faith as a witness in the cause;

(G) That he is akin by consanguinity or affinity within the fourth degree, to either party, or to the attorney of either party;

(H) That he or his spouse, parent, son, or daughter is a party to another action then pending in any court in which an attorney in the cause then on trial is an attorney, either for or against him;

(I) That he, not being a regular juror of the term, has already served as a talesman in the trial of

any cause, in any court of record in the county within the preceding twelve months;

(J) That he discloses by his answers that he cannot be a fair and impartial juror or will not follow the law as given to him by the court.

Each challenge listed in this section shall be considered as a principal challenge, and its validity tried by the court.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-23-02	p. 1353
Reported, S. Judiciary on Criminal Justice	02-20-02	p. 1487
Passed Senate (32-0)	02-20-02	p. 1489

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