

N.C.P.I.—Crim 100.11
INVESTIGATIVE GRAND JURY CHARGE
CRIMINAL VOLUME
REPLACEMENT JUNE 2015
N.C. Gen. Stat. §§ 15A-622(h), 15A-623(h)

100.11 INVESTIGATIVE GRAND JURY CHARGE

NOTE WELL: If the existing grand jurors on a case are serving as the investigative grand jury, then you should instruct them that they will be serving throughout the complete investigation. You should explain to the jurors that their duties and responsibilities are different on an investigative grand jury panel and it differs from their responsibilities on a grand jury in a number of ways.

NOTE WELL: See provisions pertaining to convening an investigative grand jury noted in N.C. Gen. Stat. § 15A-622(h).

*NOTE WELL: This instruction should be given in **secret** in the grand jury room. The activities and, indeed, even the existence of an investigative grand jury are highly secret. Our law makes it clear that no one should know that such a grand jury is in operation. No one is to know what witnesses have been called before it, or what crimes it is investigating. It is important that you understand that no information is to leave your grand jury room, from you or from the officers involved, except that the officers may transmit information to other investigating agencies, as authorized by law. N.C. Gen. Stat. § 15A-622(f) provides, "After new grand jurors have been sworn in, the presiding judge may give the grand jurors written or oral instructions relating to the performance of their duties. At subsequent sessions of court, the presiding judge is not required to give any additional instructions to the grand jurors." This instruction should be given (1) at the beginning of the first criminal session after January 1st and July 1st, when there will be at least nine new grand jurors, and (2) whenever a replacement grand juror has been drawn as provided for in N.C. Gen. Stat. § 15A-622(b). N.C. Gen. Stat. § 15A-622 requires written or oral instructions be given and it should be recorded by the court reporter that the instructions have been given.*

See the N.C. Criminal Bench Book Superior Court for a grand jury questionnaire and the order of appointment of a grand jury foreperson.

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You have been selected to serve as an investigative grand jury. The grand jury is a time-honored institution, whose function is essential to our system of justice. Our state Constitution guarantees that no person shall be placed on trial for a felony without that person's consent, unless that person has been indicted by a grand jury. This provision is a barrier against unjust prosecution. The grand jury not only brings to trial persons who have been accused of crime, but also protects persons from unfounded accusations.

In addition to acting upon bills of indictment, grand juries historically have had investigative powers, which authorized them to look into suspected criminal activities within their jurisdiction. An investigative grand jury has different powers and functions than a normal grand jury.

I am speaking to you this morning to notify each of you that the grand jury which you constitute will hereafter be serving in an investigative function capacity and will so serve until completion of the investigation of the crimes contained in the petition which convened this investigative grand jury.

As an investigative grand jury you are authorized to request the district attorney to subpoena those persons believed to have knowledge of crimes under investigation to appear before you, to examine them as to what they know, and have the testimony of such persons taken by a Court Reporter so it becomes a matter of record. Any other persons who have information and who wish voluntarily to testify before the investigative grand jury may do so. The crimes that the investigative grand jury may inquire into are very narrowly defined by the law; these are limited to crimes involving G.S. 90-95(h) (drug trafficking), G.S. 90-95.1 (continuing criminal

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enterprise), G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude).

It is the duty of each of you to be present every time this investigative grand jury is convened. However, your foreperson may excuse individual jurors from attending particular sessions of the investigative grand jury, except that the foreperson may not excuse more than two of you for any one session. Such excuses should be granted only in a case of emergency, such as sickness or death in the family, or other justifiable good cause. No grand juror may be excused permanently without consulting with the court.

Your grand jury consists of eighteen (18) members.

A quorum is the number of members of a group which must be present for that group to transact business lawfully. For an investigative grand jury, a quorum is twelve¹, so at least twelve of you must be present at all times for the lawful transaction of business. If less than twelve of you are present, even if only for a short time, the proceedings must stop until a quorum is again present.

The activities and, indeed, even the existence of an investigative grand jury are highly secret. Our law makes it clear that no one should know that such a grand jury is in operation. No one is to know what witnesses have been called before it, or what crimes it is investigating. It is important that you understand that no information is to leave your grand jury room, from you or from the officers involved, except that the officers may transmit information to other investigating agencies, as authorized by law.

The fact that any witness has been subpoenaed before the grand jury

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is secret. The subpoena is issued by the District Attorney and will only be returned to the Supreme Court of North Carolina; there will be no record in our court here in (*name county*) County that an investigative grand jury convened or that any witness appeared and testified. That is why I am talking to you here and not out in the regular courtroom. This room has been selected for your investigative function because it is secure and will enable grand jury witnesses and officers to come and go without attracting attention.

Anyone who reveals any information about the existence and activities of this investigative grand jury is in contempt of court and may be punished accordingly. Therefore, it is very important that you know exactly what to do if anyone asks you anything about the grand jury, including whether an investigative grand jury has been convened.

If someone should approach you about your grand jury service, inform either District Attorney (*name District Attorney*) or the presiding judge about such contact. Even if it is a situation that you do not think requires any action on the presiding judge's part, or anybody else's part, you should report it to the court at once so you are protected if the matter should come up later.

Again I remind you that the secrecy of all grand jury proceedings is of the utmost importance. The purpose of this secrecy is threefold: First, it guarantees that each of you is free to discuss and debate the evidence fully and vigorously without any fear that what you say or do may be made public at any future time. Second, it prevents anyone charged with a crime from learning of the investigation before it is complete and reduces the chance

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that such a person will escape and defeat the process of criminal justice. Finally, it shields from publicity those persons against whom accusations are brought which you find unfounded. If publicity were given to the fact that the grand jury investigated a person, his or her reputation might be ruined, even though that person is innocent of any crime.

Your oath will preclude now and forevermore any comment or publicity of what goes on in this grand jury room. It is your solemn obligation to keep secret everything that takes place in this investigative grand jury room, including the subjects discussed or the identity of the persons who appear before you. I repeat: your oath requires you to keep in absolute secrecy all matters, persons, and discussions that occur in your sessions. This duty exists throughout the time of your service and continues forever, and is always subject to punishment for contempt of court if the duty is violated.

District Attorney (*name District Attorney*) and any prosecutor the District Attorney deems appropriate, will be present at and during your investigative grand jury proceedings. The prosecutor is present in order to question each witness who has been subpoenaed to appear before you. After the witnesses are sworn by your foreperson to testify truthfully, the prosecutor will question them. When the prosecutor has finished questioning the witnesses, the foreperson may ask any questions that the foreperson has of the witness, then other members of the investigative grand jury may ask questions.

Because the Court Reporter will be present during your proceedings to take down the questions that are asked and the witnesses' answers and make a permanent transcribed record of the testimony, if you ask a

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question, be sure to speak loudly enough so that both the witness and the Court Reporter can understand you. You will have numbered seats. Remember the number and sit in the same seat each time. If you ask a question, state your seat number first, because that is the best way for the Court Reporter to know who you are. It also makes it unnecessary for you to reveal your name in front of a witness.

After the prosecutor has finished the examination of a witness, you may or may not have further questions you wish to ask. Refrain from making any comments regarding the proceedings unless you are in the grand jury room for deliberations. No one but grand jurors may be in the jury room during any of your deliberations, and off the cuff comments such as "I don't believe that witness" could be considered as deliberations. You may, of course, ask questions of the witnesses, but you should avoid any other comments.

Your foreperson will call those persons whose names are listed on the bill as witnesses, one at a time. Your foreperson must mark the bill by placing an "X" or check mark by the name of each witness who was sworn and examined by you in connection with that bill. If you wish to hear any other person not named on a bill under consideration, you must through your foreperson request the prosecutor to add that person's name to the bill and call such person as a witness. The prosecutor may, in the prosecutor's discretion, call or refuse to call that witness. The person accused in a bill of indictment is never called to be questioned by the investigative grand jury.

Witnesses should be treated courteously when they appear before you. Questions should be put to them in an orderly fashion. If there is any

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doubt as to the propriety of any question, you may ask the prosecutor or his assistants for advice. If necessary, a ruling may be obtained from the court. Any witness must be permitted to leave your room at reasonable intervals and for a reasonable period of time to consult with their attorney before answering any question.

You are the judges of the credibility of the witnesses who appear before you. You may believe all, part, or none of the testimony of a particular witness. It is for you to decide whether to believe all or any part of the testimony of a witness. It is not proper for the court, the prosecutor, or any law enforcement officer to determine that for you.

It may assist you in determining the credibility of a witness to consider whether the witness is personally interested, whether their testimony has been corroborated by other witnesses or circumstances in the case, what opportunity the witness has had for determining the matter about which they testify, the reasonableness of their story, and the manner and demeanor of the witness while testifying before you. From these factors, you may determine whether you believe the witnesses who testify before you.

No one may be present with you in the grand jury room while you are hearing a witness, other than that witness, the prosecutor, the Court Reporter, an interpreter for the witness or a law enforcement officer holding the witness in custody. Each witness will appear before you separately.

Anyone who refuses to testify when required to do so, can be sentenced to jail for contempt.

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A witness does have the right to plead the Fifth Amendment. The witness may refuse to answer on the grounds that it might incriminate him or her. That is a right we all have and you should not hold the exercising of such constitutional right against a witness if a bill of indictment against him or her is later submitted to you.

If a witness who is called before you claims their Fifth Amendment right to refuse to answer any questions that might tend to incriminate him or her, the prosecutor may choose to grant what is known as "use immunity" to such witnesses. This means that the witness will not be prosecuted at some later time for any answer the witness gives even if the answer does tend to incriminate him or her. Since the witness will not be prosecuted for the answers the witness gives, the witness then has no further right to refuse to answer the questions that are asked. If a witness does refuse after having been given "use immunity," the presiding judge can hold the witness in contempt and force the witness to testify. If necessary, the judge can put the witness in jail to compel his or her testimony, or otherwise punish the witness if the witness continues to refuse.

I direct the foreperson to keep a record of your attendance. Since you may be called upon to decide on an indictment after a series of grand jury meetings, it is important that you have been present during testimony regarding that indictment.

If you missed just a few sessions, the record, which is the Court Reporter's transcription of the witness's examination, could be made available for you. You could read that and catch up on what you missed. If you missed too many sessions, a problem would exist in that you would not

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get to see the witness's demeanor to help you judge the witness's truthfulness, and you might have questions that you would not have a chance to ask. If you miss a session and are still not satisfied after having read the transcript of that session, the witness could be recalled, but that would mean that all of the other grand jurors would have to sit through testimony they had already heard. So, try not to miss any session. However, your foreperson may excuse individual jurors from attending particular sessions of the grand jury, except that your foreperson may not excuse more than two of you for any one session. Such excuses should be granted only in a case of emergency, such as sickness or death in the family, or other justifiable good cause. No grand juror may be excused permanently without consulting with the court.

If, during the course of these investigations, something comes up that bothers you to the extent that you do not feel you could be fair, or if names come up of people who are close to you, let your foreperson know that you need to do what is called "recusing" yourself. That means that you disqualify yourself from hearing or taking any action upon that particular evidence.

In performing your duties, you are free to exercise your own judgment without fear or favor and you should not be deterred or influenced by the criticism of the public, the prosecutor, or the court. You are the defenders of the innocent as well as the accusers of the guilty, and in both respects you vindicate the integrity of the law. Ours is a government based on law, and there can be no more significant role in maintaining this precept than that assigned to the investigative grand jury.

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Your membership on the grand jury is a high honor. You are among a relatively small number of citizens of your county who are chosen to serve on the investigative grand jury. You should strive to participate responsibly in performing your grand jury duties. Always remember that the proper administration of justice is essential to our way of life. It must always be above suspicion.

What I have just instructed you is the nature of an investigative grand jury proceeding. You will hear the testimony of witnesses, including both witnesses who refuse to give information to the prosecutor and investigative officers outside of this room, and witnesses who want to testify before you voluntarily so that their testimony will be on the record. The testimony will be only about [drug trafficking] [continuing criminal enterprise] [human trafficking] [involuntary servitude] [sexual servitude]. It cannot involve any other crime; the law is very clear about that.

After you have heard evidence from the witnesses who appear before you, the prosecutor may then submit to you bills of indictment accusing persons of criminal acts. These bills of indictment would be based upon the evidence you received during the course of your investigative activities. If such bills are submitted, you must excuse the prosecutor, the Court Reporter, and all other persons who are not members of your investigative grand jury while you discuss, deliberate upon and vote on them.

I wish to impress upon you the fact that it is not your duty to try the question of the guilt of innocence of the defendant named in the bill of indictment. That is the province of the trial jury in the presence of the Court, where the defendant is present and may be heard. It is only your

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province to hear the evidence on behalf of the State and to proceed with the investigation far enough to satisfy twelve of your number that the crime named in the bill of indictment has probably been committed and that there is probable cause that the named defendant is guilty of the crime.

Probable cause is defined to be a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that the person accused is guilty of the offense of which the person is charged. You need to answer only two questions: First, was a crime probably committed, and second, did the named accused probably commit that crime?

There must be at least twelve affirmative votes- finding probable cause to believe that the crime or crimes alleged in the particular bill were probably committed by the named accused- before you can return a true bill of indictment. Your foreperson would then sign and return the bill to the presiding judge in secret with your action indicated upon the face of the indictment. Again, I caution you that any deliberations must be conducted with only your grand jury members present and no one else.

I want to thank each of you in advance for taking time out of your busy lives to perform this important civic duty. I realize that you are making a personal sacrifice but I believe that you will find this experience to be rewarding. Furthermore, at the end of your term as an investigative grand juror, you will have the satisfaction of having helped to render justice among your fellow citizens.

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APPENDIX: OATHS

OATH OF THE FOREPERSON OF THE INVESTIGATIVE GRAND JURY

You, as foreperson of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own, you shall keep in secret; you shall present no one for envy, hatred, or malice; neither shall you leave anyone unrepresented for fear, favor or affection, reward, or hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

OATH OF INVESTIGATIVE GRAND JURORS

The same oath which your foreperson has taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

OATH OF WITNESS BEFORE INVESTIGATIVE GRAND JURY

You swear (or affirm) that the evidence you shall give before the Investigative Grand Jury, upon this bill of indictment against _____, shall be the truth, the whole truth, and nothing but the truth, so help you, God.

OATH OF COURT REPORTER

Do you swear (or affirm) that you will keep secret all matters before this Investigative Grand Jury within your knowledge and will refrain from disclosing anything which transpires during any of its sessions, so help you, God?

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OATH OF INTERPRETER PRESENT DURING INVESTIGATIVE GRAND JURY
SESSION

Do you solemnly swear (or affirm) that as an interpreter before this Investigative Grand Jury you will impersonally, truthfully, accurately, and literally, and without any additions or deletions, and without adding any remarks of your own, translate and repeat to the witness every question propounded to him, and that you will impersonally, truthfully, accurately, and literally, and without any additions or deletions, and without adding any remarks of your own, translate and repeat to the

Investigative Grand Jury every answer of the witness to such question and every statement made by the witness in response to such question, so help you, God?

Do you also swear (or affirm) that you will keep secret all matters before this Investigative Grand Jury within your knowledge and will refrain from disclosing anything which transpires during any of its sessions, so help you, God?

OATH OF LAW ENFORCEMENT OFFICER HOLDING A WITNESS IN CUSTODY
DURING INVESTIGATIVE GRAND JURY TESTIMONY

Do you swear (or affirm) that you will keep secret all matters before this Investigative Grand Jury within your knowledge and will refrain from disclosing anything which transpires during any of its sessions, so help you, God?

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1 The statute is silent as to quorum. The number twelve here is borrowed from old charges circulating among superior court judges. N.C. Gen. Stat. § 15A-622(d) provides, "the foreman may excuse individual jurors from attending any particular session of the grand jury, provided he may not excuse more than two jurors for any one session." This could be read to imply that a quorum is now sixteen, but the better reading seems to be that the grand jury can still transact business in the face of unexcused absences, as long as the customary quorum of twelve is present. Hence the inclusion of this paragraph in the charge.