CRIMINAL LAW REVISION COMMISSION
311 State Capitol
Salem, Oregon

THE GRAND JURY IN OREGON

Some Future Alternatives

(February 1972)

Criminal Procedure Reference Paper

Reporter: Bert Gustafson

Subcommittee No. 3

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INTRODUCTION

This paper deals with the policy alternatives for the grand jury in Oregon. Initially, the merits of the grand jury system will be discussed along with the advantages of the information/preliminary hearing system. Thereafter, four alternative proposals will be adumbrated to focus on the two questions:

(1) Should there be a grand jury in Oregon?

(2) If so, what should be the basic form of the grand jury?

The four proposals take the form of existing practice and law in four different states and one country, England. In addition to the above, some recent opinionative research dealing with the grand jury in Oregon will be summarized.

In 1966, research indicated that 24 states required a grand jury indictment for felonies. In addition, six more states required an indictment by grand jury for serious felonies (i.e., punishable by more than five or ten years or life imprisonment). The remaining 20 states allowed initiation of a prosecution by either indictment or information.[1]

EVALUATION OF THE MERITS OF THE GRAND JURY[2]

1. Historic Importance as a Pillar of Individual Freedom

The first grand jury emerged in 1166 with the creation of the Assize of Claredon. This body assisted the crown by hearing complaints and preferring criminal charges. An accusation raised a presumption of guilt and trial by compurgation or ordeal followed.

During the next 500 years the trial by ordeal was abolished and the grand jury was separated from the trial jury. However, both bodies continued to act for the crown. In 1681 the grand jury returned an indictment with "ignoramus" written across it. This occurred in the Earl of Shaftesbury Trial and created for the first time grand jury independence from the crown.

Thus, a body originally committed to assisting the crown in ferreting out criminals emerged after hundreds of years as a protector of individual liberties against the crown. However, in the 18th and 19th century the defendant was given certain rights. In 1702 the defendant could call witnesses; in 1758 he could be advised by counsel; in 1836 counsel could address the jury and in 1898 the defendant could testify on his own behalf.

The preliminary hearing held by justice of the peace and stipendiary magistrates developed in the 19th century and early 20th century. This hearing afforded both sides an opportunity to be heard in an unbiased and public manner. It was the full implementation of the preliminary hearing in England which caused the grand jury to become a useless appendage to the criminal system. In 1933, Parliament abolished the grand jury. An obituary of the English grand jury system may read: "Born in 1166 to increase accusations of crime, lived to be termed the palladium of justice, and died in 1933 of inutility on a wave of economy."[3]

2. Protection of the Innocent Accused

A grand jury, which proceeds in secrecy, is better able to protect the good name and reputation of the innocent accused.

In cases where an accused is bound over for indictment by the grand jury after a preliminary hearing, the accused's good name is already sullied before any grand jury deliberation.

Where the grand jury indictment is sought before an arrest, only the prosecution witnesses are heard with hearsay evidence being admissible. The accused has no right to cross-examine the witness, no right to present his side of the "story" and the accused has no right to have counsel attend the hearing.

Usually, the grand jury hears only the state's evidence sufficient to establish a prima facie case. The press of cases in larger counties also reduces the time that a grand jury will spend on any one particular case. Therefore, the protections of the grand jury may be more theoretical than real.

3. Grand Jury Secrecy Benefits the State in Obtaining Evidence and Indictments

The grand jury secrecy permits the state to obtain willing witnesses because they may testify without apprehension that their testimony will be subsequently disclosed. Secrecy further prevents the accused from escaping and prevents him from obtaining information which might facilitate suborning false testimony or threatening witnesses.

In instances where a preliminary hearing occurs first, the substance of the witnesses' testimony is known and the identity of the complainant and principal witnesses is also known. Therefore, secrecy can offer no protection to witnesses already known at a preliminary hearing.

A witness who reveals damaging evidence at a grand jury hearing most likely must reveal this same evidence at trial. The secrecy at a grand jury hearing is no real protection because the witness knows he must testify in open court.

Enlightened discovery procedures will also deter the secrecy aspects of the grand jury proceedings. Discovery procedure eliminates the surprise element at a criminal trial and makes the trial more of a search for the truth than a contest full of surprises and technicalities.

> "The truth is most likely to emerge when each side seeks to take the other by reason rather than surprise. The more open the process for eliciting it, the less need there is of surprise."[4]

Many states, including Oregon, require the names of grand jury witnesses to be endorsed on the indictment. This procedure allows the accused to be aware of the identity of the witnesses. At times, there is no need to foreclose an accused from escaping with secret proceedings because he has frequently been arrested first, a preliminary hearing held and he is either out on bail or incarcerated by the time of the grand jury proceedings.

4. Miscellaneous Arguments Favoring the Use of the Grand Jury Indictment

(1) Aids the prosecution in acquainting witnesses with legal proceedings, thus assuring more favorable testimony.

(2) A citizen's participation on a grand jury gives him a valuable experience in observing the workings of the court and participating actively in law enforcement.

(3) The grand jury may act as a buffer between the general public and the prosecutor where the crime charged involves public officials or is of such a heinous nature as to raise strong public indignation.

5. Grand Jury Performs an Investigative Function Which Cannot be Replaced by the District Attorney

As distinguished from the power of the grand jury to indict, the power to investigate criminal activity and malfeasance in public office represents a very viable alternative for grand jury authority. However, the investigation without the assistance of the district attorney is hampered by a lack of funds and an independent expert assistant. Therefore, investigations by the grand jury are more effective when coordinated with the efforts and office of the district attorney.

Although an independent grand jury investigation normally proves ineffective, one initiated and guided by the district attorney's office can bear much fruit since the state has the entire police force at its disposal. The police force can investigate the subject matter under inquiry because they have the manpower and funds to pursue to the depths suspected crime. The district attorney's office is likewise benefited by acting in conjunction with the grand jury in investigating matters of a public nature. Through the grand jury it can compel witnesses to testify under oath, have them held in contempt of court if they refuse, secure the production of books, papers and other documents - powers otherwise unavailable to that office in a general investigation.[5]

ADVANTAGES OF THE INFORMATION AND PRELIMINARY HEARING

1. Procedural Distinctions

Indictment	Information
Arrest	same
Magistrate Hearing (eliminated if arrest after indictment)	same
Commitment or Holding Over for Trial	same
Imprisonment or Bail	same
Calling & Formation of Grand Jury	no
Grand Jury Hearing	no
Grand Jury Deliberation	no
Preparation of Indictment	Information prepared
Signing & Filing with Clerk	same

2. Prosecution By Information Saves Time

The above general comparison of initiating a criminal trial illustrates the efficiency of the information system over the time-consuming indictment system. The accused prosecuted under an information need not wait for a grand jury indictment. In some areas where the grand jury is extremely busy or where the grand jury must be summoned, the wait in jail can lengthen unnecessarily.

3. Prosecution By Information Saves Funds

The grand jurors must be called, the sheriff diverted from other duties to subpena witnesses, a prosecuting attorney must attend the proceedings and the court may be called upon to instruct the grand jury. The grand jurors must be paid and in

addition, some courthouses provide special hearing rooms which necessitate additional capital outlays from the county treasury. These costs may not be great but when the accused is prepared to plead guilty, the cost is wasted. Of course, a grand jury indictment may be waived by a defendant who desires to plead guilty.

4. Duplicity of Grand Jury Proceedings and the Preliminary Hearing

The grand jury proceedings leading to an indictment and a preliminary hearing leading to an information are generally duplicious. The two proceedings accomplish the same ends, initiation of a criminal trial, through somewhat different means.

The district attorney at a preliminary hearing must show, to the satisfaction of the magistrate, that a crime has been committed and there is sufficient cause to believe the accused guilty. The proof requirements at a grand jury hearing are slightly different. A grand jury should indict when in its judgment all the evidence, if unexplained or uncontradicted, would warrant a conviction by a trial jury. (See ORS 132.390, 133.820).

The duplicity arises when the district attorney uses a preliminary hearing first and then seeks an indictment by the grand jury. The duplicity can be avoided by allowing the district attorney to initiate criminal trials through the information and preliminary hearing system without a subsequent grand jury hearing.

5. Advantages of a Preliminary Hearing

The preliminary hearing magistrate is normally trained in the law with some experience in criminal cases. The grand jurors are lay persons with normally no experience in criminal cases. The magistrate will be less influenced by the district attorney and far more alert to throw out a case based on hearsay or other inadmissible evidence than lay persons untrained in the procedure of evidence.

The accused is present at a preliminary hearing while he is generally not present at a grand jury hearing. Therefore, the accused can confront the witnesses against him and also cross-examine them at a preliminary hearing while he cannot do so at a grand jury hearing. The accused has a right to representation by counsel at the preliminary hearing while no right to counsel during a grand jury proceeding exists.

In addition to the protections of the preliminary hearing mentioned above, the accused can present his own evidence in order to prevent the filing of an information against him.

The preliminary hearing also requires the prosecuting attorney to properly charge the defendant with a crime that can be proved at trial. When a grand jury is used, the duty of proper charging is shared with the grand jury. Thus, the preliminary hearing takes on an added importance by the elimination of grand jury proceedings and a more proper criminal charge.

During considerations of plea-bargaining, a prosecuting attorney may have the grand jury indict for a more serious crime

than a preliminary hearing would find. Therefore, an effective preliminary hearing would eliminate or reduce "bluffing" by the prosecutor.

The preliminary hearing requires, due to the legal qualifications of the magistrate, the prosecutor to be more prepared at an earlier juncture to present the case than if he were presenting it before a grand jury. The preliminary hearing occurs, generally, at an earlier date than a grand jury hearing because the grand jury must be summoned while a magistrate is readily available.

The information and preliminary hearing procedure saves government time and money while affording the accused a good opportunity to initially confront the state's case against him. The preliminary hearing and information system will therefore ascertain the existence of probable cause at an earlier time, reduce surprise, increase efficiency and economy of the administration of criminal justice, and bring the accused to trial faster than through the grand jury and indictment system.

ALTERNATE PROPOSALS

1. Complete Elimination of the Grand Jury

On the 28th day of July 1933, the English Parliament abolished the grand jury.[6] Since England does not have a written constitution, the act by Parliament was the only act required to eliminate the grand jury.[7]

Michigan has no constitutional provision in regard to the grand jury but provides for it through statute. The 1835

constitution has a grand jury provision which was not included in the constitutions of 1850, 1908 and 1963. Michigan could abolish the grand jury by a mere legislative act.

Oregon, on the other hand, provides for a grand jury through its Constitution, Article VII (amended) at section 5. If Oregon were to eliminate the grand jury the Constitution would have to be amended to delete all references to the grand jury. In addition, chapter 132 of the ORS would have to be repealed by the legislature.

Section 5, Article VII (amended) could read:

> "Sec. 5. In civil cases three-fourths of the jury may render a verdict. The Legislative Assembly shall so provide that the most competent of the permanent citizens of the county shall be chosen for jurors. Any person may be charged in any court with the commission of any crime or misdemeanor defined or made punishable by any of the laws of this state upon an information filed by the district attorney as prescribed by law."

2. Constitutional Provision for Information and Preliminary Hearing

If the grand jury were completely eliminated the initiation of a prosecution would be through an information filed by the prosecuting attorney. The process would also include a preliminary hearing before a magistrate to establish probable cause. Alternate proposal number 1 leaves the procedure and requirement of a preliminary hearing to the legislature. However, if this is not the desired method, a provision providing for a preliminary hearing by a magistrate could be included in the Oregon Constitution.

The states are not required by the Federal Constitution to initiate prosecutions for serious crimes by grand jury indictment.

The case of Hurtado v. California[8] held the right to indictment by a grand jury was not fundamental and therefore the states were free to choose their own procedure for initiation of a criminal prosecution. The federal right to indictment has never been incorporated under the due process clause of the Fourteenth Amendment and made applicable to the states.

In a somewhat later case, the United States Supreme Court restated the Hurtado theory in affirming the Oregon Supreme Court decision in Lee Woon v. Oregon.[9]

> "But since, as this court has so often held, the 'due process of law' clause does not require the state to adopt the institution and procedure of a grand jury, we are unable to see upon what theory it can be held that an examination, or the opportunity for one, prior to the formal accusation by the district attorney, is obligatory upon the states.
>
> "The matter is so clearly settled by our previous decisions that further discussion is unnecessary."[10]

Therefore, the grand jury procedure is not mandatory under due process. However, any alternative procedure must still pass muster under due process and fulfill "traditional notions of fair play and justice."[11]

The Oregon Constitution Article VII (amended), section 5 could be amended to read:

> "In civil cases three-fourths of the jury may render a verdict. The Legislative Assembly shall so provide that the most competent of the permanent citizens of the county shall be chosen for jurors. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information after examination and commitment by a magistrate as prescribed by law."

3. Limited Grand Jury

The grand jury in the State of Washington is constitutionally established but limited by statute. The constitution initially provides for prosecution initiation by either indictment or information:

> "Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law."[12]

The Criminal Investigation Act of 1971[13] substantially limited the powers of the grand jury and the criterion upon which a grand jury could act. The new provisions allow a grand jury only to be called by a majority of the superior court judges in any county and only upon sufficient evidence of criminal activity or corruption.

> "No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause."[14]

The Washington Grand Jury is therefore of limited authority and use. The overwhelming majority of criminal prosecutions will be initiated by information and preliminary hearing. The grand jury will be used to investigate what the majority of the superior court judges think is corruption.

The Washington approach leaves the grand jury almost completely in the hands of the legislators because of the words: "...as shall be prescribed by law."[15] If Oregon were to choose this alternative, Section 5 of Article VII (amended) could be amended to first allow either an information or an indictment and then delegate authority to the legislature to prescribe the specific procedure for the grand jury.

Under this alternative, Section 5 Article VII (amended) would need a complete rewriting because patchwords would further confuse the public and create misunderstanding with subsequent readers. The current style of Section 5 makes a change to this alternative awkward because most of the section would be unnecessary if the specifics were delegated to the legislature. The constitutional provision could be a mere statement of policy, like Washington's, leaving the specifics to the Oregon Revised Statutes.

Oregon's first Constitution provided for modification or abolishment of the grand jury by the Legislative Assembly:

> "The Legislative Assembly shall so provide that the most competent of the permanent citizens of the county shall be chosen for jurors; and out of the whole number in attendance at the Court, seven shall be chosen by lot as grand jurors, five of whom must concur to find an indictment; but the Legislative Assembly may modify or abolish grand juries."[16]

This provision was a compromise between the forces that would abolish the grand jury and those that favored the continued existence of the grand jury.

In 1899 the legislature provided for prosecution by information alone:

> "Hereafter it shall be lawful for the district attorney of any judicial district of this state, and it is hereby made his duty, to file, in the proper district court, an information charging any person or persons with the commission of any crime defined and punishable by any of the laws of this state, and which have been committed in the county where the information is filed." (Bellinger and Cotton, section 1258, 1902).

However, in 1908 the people of Oregon amended the Constitution through an initiative procedure. The amendment provided for a mandatory grand jury indictment. The effect of the initiative was to repeal the 1899 legislative act concerning informations and to take away the legislative authority to abolish or modify the grand jury.

4. Optional Prosecution; Indictment or Information

Some states allow the prosecuting attorney the choice of initiating a prosecution with an information and preliminary hearing or indictment and grand jury hearing. California's Constitution Article I, section 8 provides in part: (for full text see appendix)

> "Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law."

California's procedure also allows a grand jury indictment and a preliminary hearing. This additional authority appears to lengthen the chain of events between arrest and trial.

Michigan has no provision in its 1963 Constitution for indictment by grand jury. However, the statutes provide for

an optional procedure by either indictment or information. The grand jury can only be summoned in writing by the judge of the particular county.

> "All provisions of the law applying to prosecutions upon indictments...shall be in the same manner and to the same extent as near as may be, be applied to informations and all prosecutions and proceedings thereon."[17]

If Oregon were to adopt an optional procedure, a constitutional amendment similar to HJR 12 (see appendix) of the 1971 Legislature could be again offered. In addition, a complete rewriting of of Section 5 of Article VII (amended) along the lines of California's provision could be done. Also, the entire portion of Section 5 dealing with grand juries could be eliminated leaving the grand jury procedure wholly with the legislature (as is the case in Michigan).

SOME OPINIONATIVE RESEARCH IN OREGON

In November 1967, Mrs. Lucy Schaefer (presently a second year law student at the University of Oregon) undertook an opinionative survey of 138 persons in Oregon. The survey dealt with the future role of Oregon's grand jury. The persons surveyed were those most likely to have an interest and an understanding of the grand jury. Judges, district attorneys and defense lawyers made up the majority of persons surveyed (see appendix tables 2 and 4).

When queried about the future role of the grand jury, 42.4% of the 92 respondents thought the district attorney should

have the option between indictment and information, and 26.1% of the respondents thought the present grand jury should remain as it is currently constituted. Only 9.8% thought the grand jury should be completely abolished (see appendix, table 1).

The survey also queried what type of substantive constitutional amendment would be best. Out of 72 responses, 38.9% thought the Constitution should contain the redefined procedures for criminal prosecution, and 30.6% of those responding thought the Constitution should merely specify that there shall be a grand jury, leaving the details to the legislature. Only 18% thought that grand jury provisions should be completely eliminated from the Constitution, thus leaving the entire existence and responsibility of the grand jury to the legislature (see appendix, table 3).

FOOTNOTES

1. Calkins, "Abolition of the Grand Jury Indictment in Illinois," 1966 Ill L F 423, 424.

2. Id, summarized from Calkins' article.

3. Elliff, "Notes on the Abolition of the English Grand Jury," 29 Amer J Crim Law & Criminology 3 (1938-9).

4. Traynor, "Ground Lost and Found in Criminal Discovery," 39 NYUL Rev 228 (1964).

5. Op. cit. Calkins at 438.

6. 23 & 24 Geo. V chap 36 (1933).

7. Op. cit. Elliff.

8. 110 US 516 (1884).

9. 229 US 586 (1913); dec. below, 57 Or 482.

10. 229 US at 590.

11. "Felony Information: Due Process and Preliminary Hearing on Probable Cause," 42 Wash L Rev 903 (1967); see also, State v. Kanistanaux, 68 Wash Dec 2d 647, 414 P2d 784 (1966).

12. Wash Const Art I, section 25.

13. Wash Laws, 1st Ex Sess, 1971 chap 67 (eff. May 10, 1971).

14. Id. at section 3.

15. See note 10.

16. Carey, History of Oregon Constitution (1926); 27-29, 212-215.

17. Mich Comp Laws Sec. 767.2.

§ 8. Criminal prosecutions; indictment or information; proceedings before magistrate; right to counsel; plea of guilty or not guilty; certification to superior court; grand jury

Sec. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. When a defendant is charged with the commission of a felony, by a written complaint subscribed under oath and on file in a court within the county in which the felony is triable, he shall, without unnecessary delay, be taken before a magistrate of such court. The magistrate shall immediately deliver to him a copy of the complaint, inform him of his right to the aid of counsel, ask him if he desires the aid of counsel, and allow him a reasonable time to send for counsel; and the magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the city or township in which the court is situated. If the felony charged is not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him whether he pleads guilty or not guilty to the offense charged therein; thereupon, or at any time thereafter while the charge remains pending before the magistrate and when his counsel is present, the defendant may, with the consent of the magistrate and the district attorney or other counsel for the people, plead guilty to the offense charged or to any other offense the commission of which is necessarily included in that with which he is charged, or to an attempt to commit the offense charged; and upon such plea of guilty, the magistrate shall immediately commit the defendant to the sheriff and certify the case, including a copy of all proceedings therein and such testimony as in his discretion he may require to be taken, to the superior court, and thereupon such proceedings shall be had as if such defendant had pleaded guilty in such court.

The foregoing provisions of this section shall be self-executing. The Legislature may prescribe such procedure in cases herein provided for as is not inconsistent herewith. In cases not hereinabove provided for, such proceedings shall be had as are now or may be hereafter prescribed by law, not inconsistent herewith.

A grand jury shall be drawn and summoned at least once a year in each county. (Amended Nov. 6, 1934.)

ENGLISH ACT OF PARLIAMENT, ABOLITION OF GRAND JURY

CHAPTER 36.

An Act to abolish grand juries and amend the law as to the presentment of indictments; to provide for the summary determination of questions as to liability for death duties; to make provision for alternative procedure for the recovery of Crown debts and to enable proceedings by the Crown to be instituted in county courts in appropriate cases; to amend the procedure as to certain prerogative writs and as to trials by jury in the High Court; to amend the law as to the payment of costs by and to the Crown; to provide for the further delegation of the jurisdiction of the Master in Lunacy; and for purposes connected with the matters aforesaid.

[28th July 1933.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Abolition of grand juries.

1.—(1) Subject to the provisions of this section grand juries are hereby abolished, but where a bill of indictment has been signed in accordance with the provisions of this Act, the indictment shall be proceeded with in the same manner as it would have been proceeded with before the commencement of this Act

if it had been found by a grand jury, and all enactments and rules of law relating to procedure in connection with indictable offences shall have effect subject only to such modifications as are rendered necessary by the provisions of this section and of the section next following.

(2) Where at the commencement of this Act any person has obtained the direction or consent in writing of a judge of the High Court for the preferment of an indictment under the Vexatious Indictments Act 1859, the direction or consent shall have effect as if it were a direction or consent for the preferment of a bill of indictment under this Act. 22 & 23 Vict. c. 17.

(3) After the commencement of this Act no precept shall be issued for the summoning of grand jurors nor shall any grand jurors be summoned, and if any such precept or summons has been issued before the commencement of this Act it shall be void so far as it relates to the summoning of grand jurors to attend at any court after the commencement of this Act.

(4) The provisions of this section, and of the section next following, shall not apply with respect to a bill of indictment preferred before or to an indictment found by a grand jury of the county of London and county of Middlesex by virtue of any of the enactments specified in the First Schedule to this Act, but where within the time limited by the Middlesex Grand Juries Act 1872 the Master of the Crown Office has received notice to the effect that it is intended to prefer a bill of indictment by virtue of any of those enactments and has given notice to the sheriff accordingly, a grand jury of the county of London and county of Middlesex shall be summoned and such a bill of indictment may be preferred and proceedings taken thereon in all respects as if this Act had not been passed. 35 & 36 Vict. c. 52.

Procedure for indictment of offenders.

2.—(1) Subject to the provisions of this section, a bill of indictment charging any person with an indictable offence may be preferred by any person before a court in which the person charged may lawfully be indicted for that offence, and where a bill of indictment has been so preferred the proper officer of the court shall, if he is satisfied that the requirements of the next following subsection have been complied with, sign the

bill, and it shall thereupon become an indictment and be proceeded with accordingly:

Provided that if the judge or chairman of the court is satisfied that the said requirements have been complied with, he may, on the application of the prosecutor or of his own motion, direct the proper officer to sign the bill and the bill shall be signed accordingly.

(2) Subject as hereinafter provided no bill of indictment charging any person with an indictable offence shall be preferred unless either—

(*a*) the person charged has been committed for trial for the offence; or

(*b*) the bill is preferred by the direction or with the consent of a judge of the High Court or pursuant to an order made under section nine of the Perjury Act 1911:

1 & 2 Geo. 5. c. 6.

Provided that—

(i) where the person charged has been committed for trial, the bill of indictment against him may include, either in substitution for or in addition to counts charging the offence for which he was committed, any counts founded on facts or evidence disclosed in any examination or deposition taken before a justice in his presence, being counts which may lawfully be joined in the same indictment;

(ii) a charge of a previous conviction of an offence or of being a habitual criminal or a habitual drunkard may, notwithstanding that it was not included in the committal or in any such direction or consent as aforesaid, be included in any bill of indictment.

(3) If a bill of indictment preferred otherwise than in accordance with the provisions of the last foregoing subsection has been signed by the proper officer of the court, the indictment shall be liable to be quashed:

Provided that—

(*a*) if the bill contains several counts, and the said provisions have been complied with as respects one or more of them, those counts only that were wrongly included shall be quashed under this subsection; and

(*b*) where a person who has been committed for trial is convicted on any indictment or any count of an indictment, that indictment or count shall not be quashed under this subsection in any proceedings on appeal, unless application was made at the trial that it should be so quashed.

(4) Where at any assizes no judge of the High Court is present, the direction or consent of the commissioner of assize who is acting, or is to act, as judge at those assizes, shall for the purposes of paragraph (*b*) of subsection (2) of this section have the like effect as if it had been given by a judge of the High Court.

(5) For the purposes of this section the expression "judge or chairman" includes a deputy recorder, deputy chairman, or acting chairman, and the expression "proper officer" means in relation to a court of assize the clerk of assize, and in relation to a court of quarter sessions the clerk of the peace, and also includes in relation to any court such officer as may be prescribed by rules made under this section.

(6) The Lord Chancellor may make rules for carrying this section into effect and in particular for making provision as to the manner in which and the time at which bills of indictment are to be preferred before any court and the manner in which application is to be made for the consent of a judge of the High Court or of a commissioner of assize for the preferment of a bill of indictment.

(7) The Vexatious Indictments Act 1859 shall cease to have effect, but save as aforesaid nothing in this section shall affect any enactment restricting the right to prosecute in particular classes of case.

(8) The provisions of any enactment passed before the commencement of this Act shall have effect subject to the adaptations and modifications specified in the Second Schedule to this Act.

Summary determination by High Court of liability as to death duties.

3. Any person against whom a claim has been made by the Crown for the payment of any death duties which have, or are alleged to have, become chargeable by reason of the death of any person, or who has reasonable grounds for apprehending that a claim may be made

House Joint Resolution 12

Sponsored by COMMITTEE ON JUDICIARY (at the request of the Committee on Criminal Law and Procedure of the Oregon State Bar)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Amends Constitution upon voter approval at next regular general election to permit criminal charge in circuit court upon information filed by the district attorney without waiver of indictment by person charged.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

HJR 12

Be It Resolved by the Legislative Assembly of the State of Oregon:

Paragraph 1. Section 5, Article VII (Amended) of the Constitution of the State of Oregon, is amended to read:

Sec. 5. In civil cases three-fourths of the jury may render a verdict. The Legislative Assembly shall so provide that the most competent of the permanent citizens of the county shall be chosen for jurors; and out of the whole number in attendance at the court, seven shall be chosen by lot as grand jurors, five of whom must concur to find an indictment. But provision may be made by law for drawing and summoning the grand jurors from the regular jury list at any time, separate from the panel of petit jurors, for empanelling more than one grand jury in a county and for the sitting of a grand jury during vacation as well as session of the court. No person shall be charged in any circuit court with the commission of any crime or misdemeanor defined or made punishable by any of the laws of this state, except upon indictment found by a grand jury; provided, however, that any district attorney may file an amended indictment whenever an indictment has, by a ruling of the court, been held to be defective in form. Provided further, however, that if any person appear before any judge of the circuit court and waive indictment, or if he has had or waived a preliminary hearing and has been held to answer upon the charge before a magistrate, such person may be charged in such court with any such crime or misdemeanor on information filed by the district attorney. Such information shall be substantially in the form provided by law for indictments, and the procedure after the filing of such information shall be as provided by law upon indictment.

Paragraph 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next regular general election held throughout the state.

TABLE 1 *

WHAT SHOULD BE THE FUTURE ROLE OF THE GRAND JURY IN OREGON?
(RECAPITULATION OF RESPONSES IN ALL RESPONDENT-CATEGORIES)

PART II-A What should be the future role of the grand jury in Oregon? (Alternative proposals from the questionnaire)	Total Response (All Categories) to Proposals	
	Number of Respondents Favoring Each Proposal	Per Cent (%) of Total Response Favoring Proposal
1. There should be no change from the present requirement of mandatory grand jury indictment (in the absence of waiver) before prosecution of any crime or misdemeanor in an Oregon circuit court.	24	26.0 %
2. The district attorney should be given a choice between the alternatives of seeking a grand jury indictment or filing an information as the basis for prosecution.	39	42.4
3. Grand jury responsibility should be limited to presentment based on investigation undertaken either on its own initiative or at the direction of the court. All other prosecutions by information.	10	10.9
4. Grand jury responsibility should be limited to presentment based solely on investigation undertaken at the direction of the court. All other prosecution by info.	3	3.3
5. The grand jury has outlived its usefulness and should be abolished. All criminal prosecutions by information.	9	9.8
6. Other (see Notes)	7	7.6
TOTALS FOR THESE RESPONSES:	92	100.0%
TOTAL QUESTIONNAIRE RESPONSE IN THESE CATEGORIES:	97	
TOTAL POTENTIAL RESPONSE IN THESE CATEGORIES:	138	

*For a breakdown of this question by respondent-category, see Pages _____, Tables _____.

NOTES: See Pages _____.

TABLE 2 *

WHAT SHOULD BE THE FUTURE ROLE OF THE GRAND JURY IN OREGON?
(SUMMARY OF RESPONSES IN ALL RESPONDENT-CATEGORIES TO THE BASIC QUESTION OF WHETHER CHANGE IS DESIRABLE)

QUESTIONNAIRE RESPONDENT-CATEGORIES	SUMMARY OF RESPONSES TO QUESTION II-A OF THE QUESTIONNAIRE						Total Responses to This Question Within Each Category
	There Should Be No Change In the Grand Jury System		There Should Be Some Change From Present Grand Jury Responsibilities				
			Alternative Indictment or Information		Some Other Change		
	No. Who Agree	% of Category	No. Who Agree	% of Category	No. Who Agree	% of Category	
1. Supreme Court Justices	1	20%	1	20%	3	60% 4/80%	5
2. Circuit Court Judges	7	23%	13	43%	10	34% 23/77%	30
3. District Attorneys	7	24%	19	66%	3	10% 22/76%	29
4. Senate Judiciary Com. Members	4	80%	--	--	1	20% 1/20%	5
5. House Judiciary Com. Members	1	17%	--	--	5	83% 5/83%	6
6. Law School Professors	--	--	2	67%	1	33% 3/100%	3
7. Political Science Professors	--	--	1	50%	1	50% 2/100%	2
8. State Bar Criminal Law and Revision Committee Members	--	--	1	50%	1	50% 2/100%	2
9. State Public Defender Office	3**	100%	--	--	--	--	3
10. Private Criminal Defense Lawyers	1	20%	1	20%	3	60% 4/80%	5
11. Selected Expert Views	--	--	1	50%	1	50% 2/100%	2
TOTALS FOR THESE RESPONSES: 92	24	26.0%	39	42.5%	29	31.5%	92
TOTAL RESPONSE TO QUESTIONNAIRE: 97							
TOTAL QUESTIONNAIRES DISTRIBUTED: 138							

*For more detailed breakdowns of responses to this question, see Pages _____, Tables _____.

**This response appeared (in subsequent interviews) to be subject to modification.

NOTES: See Page ___.

TABLE 3 *

RECAPITULATION OF RESPONSES IN ALL RESPONDENT-CATEGORIES: IF A CHANGE FROM EXISTING GRAND JURY PROCEDURES IS DESIRABLE, WHAT TYPE OF SUBSTANTIVE CONSTITUTIONAL AMENDMENT WOULD BE BEST?

Part III-A: IF A CHANGE FROM EXISTING PROCEDURE IS DESIRABLE, IN WHAT WAY SHOULD OREGON'S CONSTITUTION BE AMENDED?	TOTAL RESPONSE (ALL CATEGORIES) TO PROPOSALS OFFERED	
	Number of Respondents Favoring Each Proposal	Per Cent (%) of Total Response Favoring Each Proposal
1. Eliminate any mention of the grand jury in the Constitution (thus, leaving it to the legislature to determine, by statutory law, whether there should be such a body and what its responsibility should be).	13	18.0%
2. Merely specify that there shall be a grand jury (thus, leaving it to the legislature to determine its responsibility).	22	30.6
3. Redefine procedures for criminal prosecution in line with desired changes (retaining specific procedural requirements in the Constitution).	28	38.9
4. Redefine procedures, but add a provision that the legislature may pass legislation to modify grand jury responsibilities or abolish that body.	5	6.9
5. No opinion	3	4.2
6. Other (see Notes)	1	1.4
TOTAL RESPONSES TO THIS QUESTION:	72	100.0%
TOTAL QUESTIONNAIRE RESPONSE IN CATEGORY:	97	
TOTAL POTENTIAL RESPONSE IN CATEGORY:	138	

*For a breakdown of this question by respondent-category, see Pages _____, Tables _____.

NOTES: See Pages _____.

TABLE 4

IF GRAND JURY REFORM IS DESIRABLE, WHICH OF THE FOUR AVAILABLE AMENDMENT PROCESSES IS, FROM THE STANDPOINT OF PRACTICAL POLITICAL REALITY, MOST LIKELY TO GET A NECESSARY CONSTITUTIONAL AMENDMENT BEFORE THE VOTERS AND APPROVED BY THEM? (SUMMARY OF RESPONSES, ALL RESPONDENT-CATEGORIES)

QUESTIONNAIRE RESPONDENT-CATEGORIES	ALTERNATIVES OFFERED BY QUESTION III-B OF THE QUESTIONNAIRE						Total of Responses to This Question, by Category
	Legislative Referral of a Single Amendment	Through a Constitutional Convention	Legislative Referral within New Constitution	Via the Initiative Process	No Opinion	It Can't Be Done Now	
1. Supreme Court Justices	4	--	--	--	--	--	4
2. Circuit Court Judges	17	--	4	1	3	2	27
3. District Attorneys	15	--	5	1	4	1	26
4. Senate Judiciary Committee Members	4	--	--	--	--	1	5
5. House Judiciary Committee Members	4	--	2	--	--	--	6
6. Law School Professors	2	--	1	--	--	--	3
7. Political Science Professors	2	--	--	--	--	--	2
8. State Bar Criminal Law and Revision Committee Members	2	--	--	--	--	--	2
9. State Public Defender Office	--	--	--	3	--	--	3
10. Private Criminal Defense Lawyers	3	--	--	--	--	2	5
11. Selected Expert Views	2	--	--	--	--	--	2
TOTAL RESPONSES TO EACH ALTERNATIVE:	55	--	12	5	7	6	95
PER CENT OF TOTAL RESPONSE TO QUESTION:	64.7 %	0.0%	14.1 %	5.9%	8.2%	7.1%	100%

NOTES: See Page ____.