



**SENATOR  
SANDRA R. WILLIAMS  
21ST DISTRICT**

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Public Utilities - *Ranking Member*  
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**Ohio Constitutional Modernization Committee  
Judicial Branch and Administration of Justice Committee**

JULY 9, 2015 1:00 P.M.  
SOUTH MEETING ROOM B, 31ST FLOOR

**Talking Points for Constitutional Modernization Committee Hearing**

- The Ohio Constitution currently requires a grand jury indictment for any felony. Abolishment of the grand jury and replacement with a preliminary hearing standard would certainly require a constitutional amendment.
- There is no transparency within Ohio's grand jury process. The proceedings, the witnesses, and the materials are entirely secret. The secrecy is guaranteed by the Ohio rules of Criminal Procedure, Rule 6, and requires no record be made of deliberations other than the final vote filed with the indictment. It is impossible for citizens to know if matters are being handled fairly. This problem is highlighted by the exceptionally high rate of indictment generally contrasted with the almost universal refusal to indict when a police officer is charged as occurred in the deaths of John Crawford in Beavercreek, Michael Brown in Ferguson, and Eric Gardner in New York.
- Secrecy in grand jury proceedings was intended to protect the reputations of the unindicted, individuals accused of crimes who grand jurors determined should not stand trial. The entire world knew the unindicted officers in the Garner, Brown, and Brelo cases. Grand jury secrecy did nothing to protect their reputations.
- The United States criminal justice system functions on the bases on fairness and trust. What is meant by fairness and how to maintain trust has evolved over time. The long-standing practice of requiring a grand jury for felony indictment is counter to fairness and undermines that trust. Early in our history, before the existence of professional prosecutors, grand juries were a crucial tool. I believe this procedure has now outlived its purpose and threatens the fairness of and trust in our criminal courts. We should act today to pursue significant reform or abolishment of the grand jury process to move closer to a modern model of justice all citizens deserve.

**Columbus Office:** Senate Building • 1 Capitol Square • Columbus, OH 43215

Email: [Williams@ohiosenate.gov](mailto:Williams@ohiosenate.gov)

Phone: 614-466-4857 • Fax: 614-466-4120



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- In high-profile, controversial cases, where officers use lethal force, prosecutors face a dilemma. If they don't file charges against officers, they risk the wrath of the community; if they do file charges, they risk the wrath of the police and their powerful unions. By opting for secret grand jury proceedings, prosecutors pass the buck, using grand juries as pawns for political cover—as seen in the Michael Brown and Eric Garner cases.

The prosecutor has sole discretion of when and how to bring charges before a grand jury in one-sided hearing. The prosecutor alone determines what witnesses and evidence to bring forward—even allowing evidence that at trial would be excluded. This creates opportunity for prosecutors to show favoritism to different defendants, such as police officers, or to stack the deck against an individual with no protection. There is no defense cross-examination, no ability to object to evidence, and no voice for those who may be indicted.

According to the FBI's Bureau of Justice Statistics, U.S. attorneys prosecuted 162,000 federal cases in 2010, with grand juries returning an indictment on all but 11 of them, or 0.0068% of the time.

- Short of doing away with grand juries, lawmakers could mandate that special prosecutors be appointed in cases involving police. There could be legislation that would give the state attorney general's office the responsibility of determining whether charges should be filed against law enforcement officers who fatally shoot citizens.
- A constitutional amendment may also be necessary to achieve the desired reforms that fall short of full elimination. Discussions with LSC revealed that, it is unclear if grand juries for which proceedings were made public, that had more involvement from judges, or that had additional checks and balances on evidence would still be considered a "grand jury" as the constitution requires.



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- The task force recommended: “The grand jury process shall be reviewed, by the Supreme Court of Ohio, the Ohio Constitutional Modernization Commission, or appropriate governmental authority, as it applies to the use of force.”
  - The task force revealed a perception that the process is unfair particularly on use of force matters given the relationship between prosecutors and officers.
  - Secrecy adds to this distrust.
  - Individual members of the task force recommended a range of reforms from full abolishment, to increased oversight and transparency, to more modest adjustments to the procedure.
- At least 65 people have been shot and killed by police across the United States within the past 30 days, according to Washington Post data. In Ohio, 11 people have been shot, 11 of them being all male. Five white, six black; nine possessed a deadly weapon, one was unarmed, and another unknown. Two suffered from mental illness.



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## **Ohio's Grand Jury Process: Out-Dated and Unfair**

The United States criminal justice system functions on the basis of fairness and trust. What is meant by fairness and how to maintain trust has evolved over time. The long-standing practice of requiring a grand jury for felony indictment is counter to fairness and undermines that trust. Early in our history—before the existence of professional prosecutors—grand juries were a crucial tool. I believe this procedure has outlived its purpose and threatens the fairness and trust in our criminal courts. We should act to pursue significant reform or abolishment of the grand jury process to move closer to a modern model of justice all citizens deserve.

I believe that Ohio should adopt a more transparent proceeding, a preliminary hearing, as the primary measure to indict the accused. Preliminary hearings take place in open court with a publicly available record—unless ordered closed by a judge for a compelling reason such as protection of witnesses. They allow the accused to put on a defense, challenge evidence, and cross-examine witnesses. The decision of whether to indict is made by a judge who runs the proceedings and may explain the reasoning.

I heard from my constituents and citizens throughout Ohio while on the Governor's Task Force on Community-Police Relations, that there are two primary problems with grand juries: a lack of transparency and unchecked authority of the prosecutor.

First, there is no transparency within Ohio's grand jury process. The proceedings, witnesses, and materials are entirely secret. Secrecy is guaranteed by the Ohio Rules of Criminal Procedure, Rule 6, and requires no record be made of deliberations other than the final vote filed with the indictment. It is impossible for citizens to know if matters are being handled fairly. This problem is highlighted by the exceptionally high rate of indictment generally, contrasted with the almost universal failure to indict police officers as occurred in the deaths of John Crawford in Beavercreek, Michael Brown in Ferguson, and Eric Gardner in New York.

Second, the prosecutor has sole discretion of when and what charge to bring before a grand jury in a one-sided hearing. The prosecutor alone determines what witnesses and evidence to bring forward—even allowing evidence that would be excluded at trial. This creates opportunity for prosecutors to show favoritism to different defendants, such as police officers, or to stack the deck against an individual with no protection. There is no defense cross-examination, no ability to object to evidence, and no voice for those who may be indicted.

For these reasons, I am pursuing elimination of grand juries through a constitutional amendment to be introduced in the Ohio General Assembly. I've ask the Ohio Supreme Court and Ohio Constitutional Modernization Commission to review procedural rules six and seven, which prevent transparency of the process. At minimum, the Court should allow transcripts to be

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publicly available, ensure the independence of grand jury stenographers, and require the presence of a judge. Finally, I will seek the opportunity for statutory changes that can mitigate the problems of grand juries while we work towards a permanent solution.