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To: Ohio Constitutional Modernization Commission
From: John Gilchrist, Legislative Counsel, Ohio Association of Chiefs of Police
Re: Grand Jury Issues

The Ohio Association of Chiefs of Police has concerns with two issues that the Committee recently voted to support. The first issue has to do with the appointment of an independent counsel to advise members of the grand jury. The second issue deals with the right of the accused to have a record of the grand jury testimony of any witness who is called to testify at trial.

The Association believes that neither should be made part of the Ohio Constitution. Constitutional provisions are extremely difficult to change or amend once adopted. These are issues that can be dealt with by the Ohio General Assembly. In addition, the Ohio Supreme Court has the authority to address either issue through its rule making process. In both instances, should either address either issue, any fine tuning of their adopted provision can more easily be accomplished by the General Assembly or the Court.

It should be noted that the Ohio Supreme Court Task Force to Examine Improvements to the Ohio Grand Jury System reviewed these issues and did not recommend either of the changes being proposed.

As for the two issues:

1) The independent counsel issue: the Association believes this provision is unnecessary because the prosecutor advises the grand jury as to the law. And since the prosecutor must prosecute the resulting indictment, he has no incentive to misrepresent the law. Should the grand jury feel the need for additional advice on the law, grand jurors can currently consult with the judge.

2) Providing transcripts to the accused: providing a transcript can potentially breach the privacy of the grand jury proceeding and may discourage some witnesses from coming forward and cooperating with law enforcement. That is, knowing that one's testimony can be released to the defendant, can be intimidating to some witnesses. Also, it should be stressed that the value of privacy of the grand jury has been consistently upheld by the U. S. Supreme Court in a variety of decisions.