



TESTIMONY CONCERNING 2026--8078

(Permitting Grand Juries to Issue Reports)

- This is at least the 7th year that the Attorney General has requested the introduction of legislation that would substantially alter the structure of Rhode Island's common law grand jury by creating a process for the release of reports concerning grand jury activities apart from the return of an indictment or a 'no true bill.'
- The legislation is a substantial alteration of existing grand jury law and practice, especially regarding secrecy of grand jury proceedings, that has existed for decades. The alterations are substantial because:
 - On many occasions that Rhode Island Supreme Court has stated that our state has a 'common law' grand jury system. As a result, there are few statutory provisions regarding grand jury proceedings and those that do exist address procedural and ministerial matters such as the number of grand jurors required for a quorum and when and where grand juries may be convened and sit.
 - Rhode Island's common law grand jury has an extraordinary amount of power, including the ability to compel testimony and witnesses in a secret proceeding and the production of physical and documentary evidence, all without the benefit of a right to counsel in the grand jury room for witnesses / targets and limited ability to invoke the privilege against self-incrimination. These powers emanate from the state constitution through the Supreme Court and not the legislature.
- In the Rhode Island Supreme Court decision, *In Re 38 Studios Grand Jury*, 225 A.3d 224 (RI 2020) the court clearly stated that when it comes to the secrecy of grand jury activities, court rules and decisions and not legislative enactments control:

Does our Superior Court have the authority to disclose grand jury materials if that disclosure is not authorized by Rule 6(e) ?....we are constrained to answer the question in the negative: There is no inherent authority in the Superior Court to disclose grand jury materials beyond that which is permitted by the Superior Court Rules of Criminal Procedure. *In Re 38 Studios Grand Jury at pp. 239-240.*¹
- When The Judiciary exercises its rule making authority (as it did in enacting Superior Court Rule of Criminal Procedure 6(e)) the court rule trumps any statutory enactment that is in conflict with the rule. Thus, if the General Assembly were to pass this legislation, not only would it conflict with R.6(e), but would be ineffectual.²

¹ Superior Court Rule of Criminal Procedure 6(e) provides in pertinent part that a "grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the State, or any person to whom disclosure is made under subdivision (e)(3)(A)(ii) shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. A knowing violation of Rule 6 may be punished as a contempt of court."

² In addition to implicating separation of powers (RI Const. ARTICLE V OF THE DISTRIBUTION OF POWERS) the enactment of the legislation would also run afoul of the following: *RIGL § 8-6-2(a)* (rules of the superior, family, district court, workers' compensation court, and the traffic tribunal shall be subject to the approval of the supreme court and when effective, shall supersede any statutory regulation in conflict therewith); *City of Warwick v. Adams*,

- After experiencing problems with grand jury reporting in Pennsylvania (the state that provided at least some of the inspiration for this legislation) that state's Supreme Court assembled a group of criminal justice stakeholders to study and make recommendations for improving its grand jury system and to address other problems that had arisen. In its final report the task force concluded that:

The Investigating Grand Jury Act should be amended to eliminate grand jury reports.

(emphasis added).³

Alternatively, the task force recommended limiting the nature and extent of the information that could be disclosed in a grand jury report; enhance the power of the court to review the grand jury report prior to release; secrecy provisions apply unless and until the grand jury report is made public by the court; and an extension of time to address issues relative to the release of the grand jury report.

- Finally, in a recent decision, the Supreme Court of Pennsylvania severely curtailed and limited the release of grand jury reports. The court held that notwithstanding a supervising judge's discretion, an individual named in the grand jury report but uncharged, has a fundamental right to reputation, notice, and due process which is implicated when they are criticized in such reports. The court also held that the report did not meet technical requirements of the reporting statute. *In re Thirtieth County Investigating Grand Jury*, 325 A.3d 573 (Pa. 2024)

QUESTIONS? COMMENTS? CONCERNS?

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772 A.2d 476, 479 (RI 2001) (in conflict between court rule and statute regarding the powers of bail commissioners the court rule controls); *Heal v. Heal*, 762 A.2d 463, p.5 of LEXIS slip opinion (RI 2000) (in conflict between court rule and statute regarding attorney sanctions the court rule controls).

³ *Report and Recommendations Investigating Grand Jury Task Force (Pennsylvania, November, 2019)* pp. 11, 52. Available at <https://www.pacourts.us/Storage/media/pdfs/20210508/140812-file-8214.pdf> (last visited 3/23/24)