



**House
Legislative
Analysis
Section**

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MULTIPLE-COUNTY GRAND JURIES

House Bill 4310 (Substitute H-2) **RECEIVED**
First Analysis (5-11-89)

JUN 06 1989

Sponsor: Rep. Nelson W. Saunders
Judiciary Mich. State Law Library

THE APPARENT PROBLEM:

Serious, organized crime rings often operate in more than one county, but one useful investigative tool available to state and local law enforcement — the citizens grand jury — can only be applied to crime suspected or occurring in a single county. Under Michigan law, a grand jury can consist of either a single judge or a panel of citizens (with different procedures applying to each), but in either case, the grand jury's jurisdiction is limited to the county in which it was formed. Although the subpoenas of a citizens grand jury have a statewide reach, its investigations must be confined to criminal activity within its jurisdiction.

Some types of criminal activity, however, tend to cross county boundaries, with different elements of the crime occurring in different jurisdictions. Drug trafficking and car theft/chop shop operations are prime examples. In order to more effectively combat such crime and bring criminals to justice, it has been proposed that state law be amended to provide for the formation of grand juries with jurisdiction over more than one county.

THE CONTENT OF THE BILL:

The bill would amend the Code of Criminal Procedure to provide for the creation of a grand jury, modeled after the citizens grand jury, with jurisdiction over two or more counties. Such a jury could be convened by the court of appeals upon petition from the attorney general or the prosecuting attorneys of the counties involved. The petition would have to establish: probable cause to believe that a crime (or a portion of it) had been committed in two or more of the counties named in the petition; and reason to believe that the grand jury could more effectively address the criminal activity than a one-county grand jury.

Grand jury creation. The court of appeals would name a circuit or recorder's court judge to preside over the multiple-county grand jury. If the jury was formed by prosecutor petition, the court of appeals would designate one of the prosecutors to assist the grand jury. The court of appeals also would have to designate the counties from which jurors would be drawn (these counties would have to be from among the counties named in the petition), the number of jurors to be drawn from each county, and the locations for grand jury proceedings. Like a single-county citizens grand jury, a multiple-county grand jury would consist of 13 to 17 individuals.

Term. As with an ordinary citizens grand jury, the term of a multiple-county grand jury generally would be six months, although the court of appeals could extend the term for a maximum period of six more months for good cause shown. The presiding judge would dismiss a jury upon completion of its functions whether or not its maximum term had been met. As with an ordinary grand jury, the grand jurors could be recalled at any time by the presiding judge or his or her successor to conclude business commenced during their term of service.

Expansion of jurisdiction. If the attorney general or prosecuting attorneys who requested the multiple-county grand jury sought an expansion of its jurisdiction, a new petition would be made to the court of appeals. For a grand jury formed in response to prosecutors' petition, the prosecutors from each of the additional counties would have to join in the petition. If it granted the petition, the court of appeals would convene a new grand jury and dismiss the existing grand jury.

Indictments. A multiple-county grand jury could indict a person for an offense committed in any county over which the jury had jurisdiction. As with single-county grand juries, a person would be indicted if nine jurors voted to do so. The indictment would specify the county or counties in which the offense took place. The indictment would remain with the court having jurisdiction over the offense, after being certified and filed with that court.

Costs. Except as otherwise provided by law, the costs of a multiple-county grand jury sought by the attorney general would be borne by the state and paid out of the general fund. If formed in response to prosecutors' petition, costs would be borne equally by each county over which the grand jury had jurisdiction.

MCL 767.9 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal implications. (5-10-89)

ARGUMENTS:

For:

At present, a grand jury investigation can be stymied by the jury's inability to follow when its investigation leads to criminal activity in another county. Although another grand jury can be formed in that other county, the secrecy surrounding grand jury proceedings is such that what is uncovered by one grand jury cannot be shared with another. By providing for multiple-county grand juries, the bill would bring an effective investigatory tool to bear on criminal activity that spans several counties. The bill thus would be especially useful in fighting drug trafficking and car theft.

Against:

Important principles of justice are suspended in grand jury proceedings, and to the degree that this argues against grand juries in general, it also argues against the bill. In grand jury proceedings, the rules of evidence do not apply, cross-examination is lacking, hearings are held in secret, and the jury enjoys broad subpoena and contempt power. In addition, citizens' grand juries have a broad investigatory authority, and are able to engage in "fishing expeditions," rather than being confined to a clearly defined line of inquiry.

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For:

Multiple-county grand juries would be more effective not only by virtue of their expanded jurisdiction: cost-sharing and resource-sharing between counties would contribute to making multiple-county grand juries more effective and economical than their single-county counterparts.

Against:

Under the bill, counties participating in a multiple-county grand jury would share equally the costs of that jury. This could be unfair for smaller counties joined with larger counties, or for low-crime counties joined with high-crime counties. Some sort of pro-rated contribution to costs might be more equitable.

Response: It is difficult to predict exactly what circumstances might surround a multiple-county grand jury. There could be a small county where the bulk of the criminal activity being investigated was occurring. A county would be responsible for a portion of the costs only if its prosecutor had sought participation in the multiple-county grand jury; the state would pay for multiple-county grand juries formed upon the request of the attorney general. The bill's approach of equal cost-sharing between counties is probably the fairest for the wide range of possible circumstances.

POSITIONS:

The attorney general supports the bill. (5-9-89)

The Prosecuting Attorneys Association of Michigan supports the bill. (5-9-89)

The Michigan Judges Association does not yet have a position on the bill. (5-10-89)

The State Bar of Michigan has not position at this time. (5-9-89)

The State Appellate Defender's Office opposes the bill. (5-9-89)