

FINAL REPORT¹

Amendment of Pa.R.Crim.P. 556

PETITIONS SEEKING LEAVE TO RESUME INDICTING GRAND JURIES

On September 8, 2015, effective November 1, 2015, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the amendment of Rule of Criminal Procedure 556 (Indicting Grand Jury) to include the required contents of the petition seeking leave to resume the use of indicting grand juries. The requirement to petition for the resumption of indicting grand juries was established in the Court's Order adopting the new indicting grand jury rules.² The contents of the petition were established by a later Order of the Court issued on March 12, 2013.³

The reason for this requirement was the manner in which the use of the indictment was originally supplanted by the use of criminal informations. The 1973 amendment of Article I, § 10 of the Pennsylvania Constitution and the subsequent enabling legislation permitted, but did not mandate, the courts of common pleas to proceed by information instead of by indictment, but only with the permission of the Court. The Court then mandated that each court of common pleas petition for the Court's permission to proceed in the use of informations. The last court of common pleas received the Court's approval to proceed by information in 1991 and, effective in 1993, the Court rescinded the indicting grand jury rules as no longer necessary. The Court's approval of petitions to resume indicting grand juries merely reverses these earlier actions.

After two years of experience with the new indicting grand jury rules, the Committee concluded that it would be helpful to provide in the indicting grand jury rules,

¹ The Committee's *Final Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Final Reports*.

² See 42 Pa.B. 4140 (July 7, 2012).

³ See 43 Pa.B. 1706 (March 30, 2013).

rather than just the Court's order, directions on how to go about doing so to courts seeking to resume indicting grand juries. Therefore, a new paragraph (B) has been added to Rule 556 listing the requirements for the contents of the petition. These requirements are taken from the Court's March 12, 2013 Order.

The amendment also clarifies the process for the resumption of the use of indicting grand juries. The Court's Orders used the phrase, "permission to summon an indicting grand jury" that suggests that a petition might need to be filed each time a grand jury has been summoned. Such an interpretation would be cumbersome and contrary to the intent of the current indicting grand jury rules when originally adopted. The existing text of the Rule 556 *Comment* uses the terminology of a petition "to resume using the indicting grand jury." The intention for the use of this terminology was that a court of common pleas would only petition the Court once for the initial permission to resume the use of indicting grand juries.

Additionally, the amendment retains the terminology of the Court's Orders that the certification must be made by "the district attorney" rather than "the attorney for the Commonwealth" since the procedure under this rule would encompass the practice within judicial district as a whole rather than being applicable to an individual case.