

## Grand Jury Selection

(Published Aug. 2016;  
Revised Oct. 2021 & Oct. 2022 & Dec 2022)<sup>1</sup>

### Introductory Note

*The following script is intended for a judge's use in screening a panel of prospective grand jurors.*

*There are four grounds for excusing prospective grand jurors:*

- (1) disqualification under the Judiciary Law, namely, the prospective grand juror is not a citizen, is not 18 years of age, has a felony conviction, or cannot communicate in English),<sup>2</sup>*
- (2) physical or mental incapacity to serve,<sup>3</sup>*
- (3) hardship,<sup>4</sup> and*
- (4) bias or prejudice.<sup>5</sup>*

*As to the first ground – disqualification under the Judiciary Law – the governing law and rules place the initial responsibility for vetting prospective grand jurors on the Commissioner of Jurors.<sup>6</sup> The judge supervising the grand jury also has the authority to excuse a prospective grand juror as disqualified under the Judiciary Law.<sup>7</sup>*

*As to the second and third grounds, the law provides for both the Commissioner and the judge to hear applications from prospective jurors for postponements and excusals based on physical or mental incapacity and on hardship.<sup>8</sup> Local practice varies as to who actually vets the panel of prospective grand jurors on those two grounds – the Commissioner, the judge, or both.*

*As to the fourth ground, only the judge can excuse a prospective grand juror on the ground of bias or prejudice.<sup>9</sup>*

*The screening questions recommended here relate to the second, third, and fourth grounds for excusal – i.e., incapacity, hardship, and bias or prejudice. The assumption is that the panel will already have been screened by the Commissioner of Jurors on the first set of grounds for qualification under the Judiciary Law, i.e., citizenship, age, felony conviction, and proficiency in English. Of course, if the judge believes that any of those requirements of the Judiciary Law should be revisited, the judge can add questions concerning those qualifications. In any event, the following instruction does, to some extent, test the jurors' proficiency in English by asking each prospective grand juror at one point whether he or she understood the Court's instructions.*

## Screening Script

Welcome. We are here to select and impanel a Grand Jury. A Grand Jury consists of 23 citizens.

The primary function of the Grand Jury is to hear and examine evidence concerning criminal offenses, and then to determine whether a person should be charged with the commission of an offense and face trial for it. The Grand Jury may also examine evidence of misconduct in public office, whether criminal or otherwise.

In performing that judgment, each grand juror must be fair in rendering his or her decision as to whether a person should be charged with the commission of a crime.

A fair juror is a person who has no personal bias or prejudice in favor of, or against, our criminal justice system, the district attorney, the person or persons that are the subject of a Grand Jury proceeding, or any witness, whether the witness be a police officer or civilian.

A fair grand juror is a person who will keep their promise to be fair and impartial and will not base their decision in any case upon a bias or prejudice in favor of, or against any person involved in a proceeding on account of that witness's race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation.

A fair grand juror must be mindful of any stereotypes or attitudes about people or about groups of people that the juror may have, and must not allow those stereotypes or attitudes to affect their decision. As you learned from the video presentation you saw during your orientation, we all develop and hold unconscious views on many subjects. Some of those unconscious views may come from stereotypes and attitudes about people or about groups of people that may impact on a person's thinking and decision-making without that person even knowing it. As a grand juror, you are asked to make a very important decision about another member of the community. I know you would not want to make that decision based on such stereotypes or attitudes, that is, on implicit biases, and it would be wrong for you to do so. A fair grand juror must guard against the impact of such stereotypes or attitudes. You can do this by asking yourself during your deliberations whether your views and conclusions would be different if the defendant, witnesses or others that you have heard about or seen in

court were of a different race, color, national origin, ancestry, gender, gender identity or expression, religious practice, age or sexual orientation, or did not have a disability. If the answer is yes, then, in keeping with your promise to be fair, reconsider your views and conclusions along with the other jurors, and make sure your verdict is based on the evidence and not on stereotypes or attitudes. Justice requires no less.

A special word about testimony of a police officer or other law enforcement person. The testimony of a witness should not be believed solely and simply because the witness is a police officer. At the same time, a witness's testimony should not be disbelieved solely and simply because the witness is a police officer. A fair grand juror must, therefore, evaluate a police officer's testimony in the same way he or she would evaluate the testimony of any other witness.

So, a fair juror is a person who will follow these instructions and listen carefully to the evidence presented in a particular case and, upon that evidence and the law, render an unbiased judgement on whether a person should be charged with a crime and face trial for it.

A Grand Jury sits for a (specify) period. So, each selected grand juror will be required to be here (specify when during that period); that means, each grand juror will be required to be here on (specify days of the week) from approximately (specify time), for a period of (specify), starting today and ending on (specify).

When your name is called, if you can serve, please take a seat in the jury box. If you have a reason you cannot serve, please step to the bench first and speak with me. This is your first and last chance to tell me that you have a problem serving on the Grand Jury. In particular, if the answer to any one or more of the following questions is yes, then, when your name is called, raise your hand and come to the bench and explain the answer to me.

**Questions:**

1) Is there any reason you cannot be here (specify days, times, weeks when required) ?

2) Will service during that period impair your health or result in a financial hardship?

*Note: Before discharging a prospective juror with a disability based on the ground that the individual's physical condition prevents him or her from serving, the court should consider, as required by the Americans with Disabilities Act, whether there is a reasonable accommodation that would allow that individual to serve on the Grand Jury.*

3) If you or someone close to you has been the victim of a crime, accused or convicted of a crime, or has a pending criminal case will that experience prevent you from being fair either to the prosecutor or to a person who is the subject of a Grand Jury proceeding?

4) Do you have a religious or other belief that would prevent you from sitting on a Grand Jury and deciding whether a person should or should not be charged with the commission of a crime?

5) Is there any reason you could not be fair in evaluating the credibility and accuracy of the testimony of a police officer or any other witness?

6) Is there any reason you cannot promise, or you doubt your capacity to keep a promise, to be fair and impartial and not base your decision upon a bias or prejudice in favor of or against a person who may appear on account of that person's race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation?

7) Can you promise to guard against allowing stereotypes or attitudes about individuals or about groups of people, referred to as an implicit bias [in the video you saw], influence your decision?

8) Is there any reason, whether it be a bias or something else, that would interfere with your ability to be fair in deciding whether a person should be charged with a crime?

Again, if your answer to any one or more of those questions is yes, then when your name is called, raise your hand and come to the bench and explain the answer to me.

*Note: If a juror does not come to the bench, ask that juror, as he/she takes a seat in the jury box, the following question to make sure the juror was listening and understood:*

Did you understand what I have said so far?

Note: Once all jurors are seated in the box, before the swearing, ask:

Ladies and Gentlemen, can each of you promise me to be fair in making the decision whether a person should be charged with a crime?

If anyone said no, please raise your hand.

Once you begin hearing cases, if a case comes before you and you know a party or a witness, or you know something about the case before the case was presented to you, or for any reason you could not be fair in judging that one case, you must immediately report that to the assistant district attorney. Do I have your promise that you will do that? If anyone said no, please raise your hand.

To Clerk of the Court: Swear the Grand Jurors.

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<sup>1</sup> The 2021 and 2022 revisions were for the purpose of including instructions and questions to ask jurors about implicit bias.

<sup>2</sup> See Judiciary Law § 510 (qualifications of jurors); Judiciary Law § 518 (court to discharge trial and grand jurors if not qualified); Judiciary Law § 509 (Commissioner of Jurors to determine qualification of prospective jurors); CPL 190.20 (2) (b) (court may refuse to swear prospective grand juror, or discharge sworn grand juror, if disqualified under the Judiciary Law); 22 NYCRR 128.5 (e) (procedure for Commissioner determining whether prospective trial and grand jurors qualified or disqualified).

<sup>3</sup> See Judiciary Law § 517 (c) (providing for excusal of prospective grand jurors on grounds of physical or mental incapacity and of hardship); see also 22 NYCRR 128.6-a (b) (1) (i); 22 NYCRR Pt. 128, app. A (II) (A), (B).

<sup>4</sup> See n. 3.

<sup>5</sup> See CPL 190.20 (2) (b) (providing that court may refuse to swear prospective grand juror, or discharge sworn grand juror, on ground of bias or prejudice).

<sup>6</sup> See Judiciary Law § 502 (Commissioner of Jurors responsible for “drawing, selection, summoning and impaneling of jurors”); Judiciary Law § 509 (providing for procedure for Commissioner to use in determining whether prospective grand and trial jurors qualified under the Judiciary Law); see also 22 NYCRR 128.5; New York State Unified Court System, *Best Practices for Jury System Operations* (April 2009), pp. 26-27, Practices 5 (a)-(e) (practices for Commissioners of Jurors to use in determining prospective jurors’ qualification under the Judiciary Law); pp. 52-53, Principle 14 (“Assure that only qualified

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jurors are sent to *voir dire*.”), Practices 14 (a), (b), (c) (practices for vetting prospective jurors for Judiciary Law qualification before being sent to judge).

<sup>7</sup> See Judiciary Law § 518 (“The court shall discharge a person from serving as a trial or a grand juror whenever it satisfactorily appears that he or she is not qualified”); CPL 190.20 (2) (b) (providing that court may refuse to swear prospective grand juror, or discharge sworn grand juror, on ground that juror is “disqualified from service pursuant to the judiciary law”); see also New York State Unified Court System, *Best Practices for Jury System Operations* (April 2009), p. 52, Standard 14.1 (where there is any question about a prospective juror’s ability to communicate in English [a requirement for qualification under the Judiciary Law], the Commissioner defers to the judge for final decision); Practice 14 (c) (noting that jurors are questioned four times regarding disqualifying felony convictions: in juror questionnaire, summons, Commissioner’s oral questioning, and judge’s oral questioning).

<sup>8</sup> See Judiciary Law § 517 (b), (c) (providing for excusal of prospective grand jurors by Commissioner or by judge on grounds of physical or mental incapacity and or hardship); see also 22 NYCRR 128.6-a (b) (1) (i), (c); 22 NYCRR Pt. 128, app. A (II) (A), (B).

<sup>9</sup> See n. 5.