M E M O R A N D U M

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AN ACT to amend the code of criminal procedure in relation to reports by grand juries

Purpose of bill:

The purpose of this bill is to provide a procedure whereby grand juries, in specific and limited circumstances, may prepare and submit reports of investigations which do not result in indictments, and whereby certain of these reports, under prescribed conditions, may be filed as public records.

Summary of provisions of bill:

Section 1 of the bill adds a new section, containing four subdivisions, to the Code of Criminal Procedure (§253-a), for the purpose outlined above. Subdivision 1 describes the three situations which may be the subjects of grand jury reports and provides for the submission of reports to the court. Subdivision 2 sets forth the standards which the report must meet before the court may accept it for filing. Subdivision 3 deals with the handling of a report concerning misconduct of a public official; and subdivision 4 provides for postponing the publication of certain reports in the interests of justice.

Basically, this bill authorizes two categories of grand jury reports: (1) Those which concern public officers or employees whose acts or failures to act are reprehensible yet fall short of constituting indictable offenses (subdivision 1 (A)) and, complementary thereto, exonerating such officials when they have been falsely accused (subdivision 1(B)); and (2) those which, by making specific recommendations for appropriate action, c all attention to conditions which are harmful to the community (subdivision 1(C)).

The remaining three subdivisions consist of safeguards to insure that a grand jury does not stray far afield in its investigation and to protect the rights of persons who either are the subject of the report or are otherwise named therein. Thus, in subdivision 2, paragraph A requires that the genesis of the

report be an investigation which the grand jury has statutory authority to conduct. Paragraph B requires that the record show that each person named in the report was given an opportunity to testify. It should be noted that the phrase "each person," as it refers to reports under subdivision 1 (A), also includes a person other than the public officer or employee who is the subject of the report. This right to testify, however, does not affect any applicable constitutional or statutory provision respecting waiver of immunity or the results that may flow from a failure so to waive. Paragraph C excludes reports which purport either to exonerate a public officer (subdivision 1(B)) or to deal with a matter of general and objective interest (subdivision 1(C)) if any person is criticized therein; personal critical reports are permitted only with regard to public officers or employees (subdivision 1(A)).

Subdivision 3 provides, in essence, that no report critical of a public officer or employee shall be made public by the grand jury or the court. Since the purpose of such report is solely to convey the grand jury's findings to the official who has disciplinary or removal power over the person criticized, the report is required to be sealed by the court. This procedure meets the oft-voiced objection that such grand jury reports are unfair because they are made public without giving the subject officer or employee a real opportunity to defend himself against the charges. It is contemplated that established departmental procedure would, before disciplinary or removal action is taken, include a hearing, thus providing the person criticized with a forum in which to answer the charges.

Subdivision 4 provides that a report which would otherwise be made a public record immediately, may be suppressed temporarily if its publication might adversely affect a pending investigation or prosecution of a criminal matter. Thus, where a grand jury report

exonerates a public officer from wrongdoing in a particular situation, or deals with a general situation of public concern, a pending investigation or prosecution concerning the same or a related subject will not be prejudiced by the publication of the report at that time.

Justification for bill:

The long-existing uncertainty concerning the legality of grand jury reports (sometimes erroneously referred to as "presentments") was finally settled by the Court of Appeals in February, 1961, in Wood v. Hughes, 9 N. Y. 2d 144. It there held-- in a 4 to 3 decision--that no statutory authority existed for the issuance of reports dealing with misconduct in office by public officials which did not amount to an indictable offense.

Far from settling the ideological controversy, the decision only intensified disagreement on the subject. Proponents of grand jury reports, reluctantly accepting the decision, have striven arduously for the enactment of legislation to permit their restoration. Their opponents, hailing the pronouncements of the majority opinion in Wood v. Hughes, have been equally adamant in insisting that the now outlawed practice should not be permitted to return.

In the 1962 session of the Legislature, a number of bills were introduced to undo the effects of the Court of Appeal's decision and, in February, 1962, a public hearing was held by the Senate Codes Committee. The principal bills there discussed were the bi-partisan Mitchell-Bonom bill and the Brook bill. However, no action was taken in the 1962 session and, upon adjournment, the problem was referred to the Temporary Commission on Revision of the Penal Law and Criminal Code.

Following intensive study of the history and background of grand jury reports, a public hearing in Albany on November 30, 1962, and a series of discussion, the Commission decided to recommend to the Legislature that no change be effected in existing law; in

short, that the decision in Wood v. Hughes be permitted to stand.

However, the Commission also concluded that considerable sentiment exists for legislation restoring some form of grand jury reports. In the event, therefore, that the Legislature deems it advisable to enact such an enabling statute, the Commission submits this bill as its recommended alternative.

In drafting this bill the Commission has sought to achieve a realistic balance that will permit the grand jury to function effectively within its traditional areas of inquiry, yet will afford maximum protection of the rights of individuals who become involved in these investigations. As a result, the permissible scope of grand jury reports in this bill is substantially more limited than was the case before Wood v. Hughes, and publication of such reports is more circumscribed than under the provisions of the aforementioned bills introduced during the 1962 session. The Commission feels that its bill represents the maximum authority that a grand jury should be granted in the rendition of reports.

Possible Objections to bill:

Other proposed bills seeking restoration of grand jury reports provide for hearings before a report is made public, or for appeal by a party aggrieved by the issuance or non-issuance of a report, or both. Since the instant bill contains no hearing or appeal provisions, objections may possibly be raised to their omission.

The absence of hearing and appeal features is deliberate--they are not necessary. Reports under subdivision 1(A) are required to be sealed and those under subdivisions 1(B) and 1(C), if they are made public, do not refer in a critical vein to an identified or identifiable person. Therefore, no one could claim to be personally aggrieved by anything in a report. If the court, under subdivision 2, 3 or 4 refuses to accept a report for filing or suppresses it thereafter, only the grand jury or district attorney might have cause to complain. The fact that this bill

does not authorize these parties to appeal from an adverse ruling is, in effect, an additional limitation on the grand jury's power and a further safeguard to the witnesses involved.

Known positions of others respecting bill:

First, it should be reiterated that the Temporary Commission on Revision of the Penal Law and Criminal Code, although sponsoring this bill, does so only as an alternative to its primary recommendation that there be no restoration of grand jury reports.*

Since this bill has not previously been circulated for comment, no authoritative assertions can be made as to the opinions of others respecting it. However, on the basis of the positions they took in the public hearing of November 30, 1962, it may be surmised that the following organizations would probably react to this bill in a manner consistent with such previously stated positions:

For grand jury reports:

District Attorneys' Association of New York State

Grand Jury Associations of the Counties of Bronx, Dutchess, Kings, Nassau, New York, Orange, Queens, Suffolk and Westchester

New York State Newspaper Editors' Association

New York Board of Trade

Against grand jury reports:

Criminal Law Committee of the New York State Bar Association

New York Civil Liberties Union.

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* For a fuller statement of its position, see the Commission's 1963 report to the Legislature.