

1 Honorable Jennifer E. Green
2 Presiding Judge, Criminal Department
3 Superior Court of Arizona in Maricopa County
4 175 West Madison Street
5 Phoenix, AZ 85003
6 (602) 506-0438

7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9
10 PETITION TO ADD RULE 12.10 }
11 AND AMEND RULES 12.7, 12.21, } Supreme Court No. R-_____
12 AND 12.25 OF THE RULES OF }
13 CRIMINAL PROCEDURE }

14 Pursuant to Rule 28 of the Rules of the Supreme Court, the Criminal
15 Department of the Superior Court of Arizona in Maricopa County respectfully
16 petitions the Court to add Rule of Criminal Procedure 12.10 and to modify Rules
17 of Criminal Procedure 12.7, and 12.25 (and by necessity with these changes, Rule
18 12.21) as proposed below in Attachment "A".

20 **Rule of Criminal Procedure 12.7**

21
22 This petition proposes changes to Criminal Rule 12.7, "Record of
23 Grand Jury Proceedings," to further ensure the confidentiality of the identities of
24 grand jurors. In Arizona, juror identities are protected. Arizona Revised Statute §
25 21-312 states that the list of juror names or other juror information shall not be
26 released unless specifically required by law or ordered by the court, and all juror
27
28

1 biographical information is closed to the public. Arizona Supreme Court Rule 123,
2 which governs access to judicial records, also states that all information obtained
3 by special screening questionnaires or in *voir dire* proceedings that personally
4 identifies jurors summoned for service are confidential. *See*, Arizona Supreme
5 Court Rule 123(e)(10).
6

7 However, in both county and state grand jury proceedings, it is currently
8 common practice to list the names of the members of the grand jury in the grand
9 jury transcripts that are filed with the superior court clerk. Furthermore, A.R.S. §
10 21-411 requires that grand jury transcripts must be made available to prosecutors
11 and defense counsel (and even defendants themselves) when requested.
12

13 The Superior Court in Maricopa County recently had a situation in a high-
14 profile case where a defense counsel filed a motion challenging a state grand jury
15 indictment. The motion attached portions of the grand jury transcript as an exhibit
16 to the motion. The transcript contained the names of the state grand jurors. The
17 motion was not filed under seal, was obtained by the media, and the state grand
18 juror names became public. While this was inadvertent on the part of defense
19 counsel, it highlighted the fact that grand jury transcripts can become relevant
20 exhibits in criminal cases and the risk of releasing grand juror names contained in
21 those transcripts is a real possibility.
22
23
24
25
26
27
28

1 This petition proposes to remedy the problem by adding paragraph (d) to
2 Rule 12.7 that will prohibit the full names of grand jurors from appearing in the
3 transcript as follows:

4
5 **The full names of grand jurors must not be set forth in grand jury**
6 **transcripts. Grand jury transcripts may provide only the grand jurors'**
7 **initials. The superior court clerk must maintain a list of grand jurors'**
8 **names, but that list must be sealed, and can only be viewed by a**
9 **judicial officer or by employees of the clerk's office as needed to carry**
10 **out superior court clerk business. The list of grand jurors' names in**
11 **state and county grand jury presentations may only be obtained by**
12 **filing a motion with the court stating the grounds for disclosure and**
13 **obtaining a court order. In determining whether to grant or deny the**
14 **motion, the court must consider privacy and safety concerns of the**
15 **grand jurors.**

16 This rule change will provide additional protection to the identities of
17 grand jurors in both county and state grand juries, while still allowing a
18 mechanism for parties to seek disclosure.

19 **Rule of Criminal Procedure 12.10**

20 This petition proposes adopting a new Rule of Criminal Procedure 12.10
21 regarding the preservation of grand jury evidence.¹ Currently, Criminal Rule 12.25
22 governs the preservation of state grand jury evidence, but there is no equivalent
23 rule for county grand juries. A new Rule 12.10 would remedy this by providing a
24 rule for the preservation of county grand jury evidence. The proposed rule would
25

26
27 ¹ The previous Rule of Criminal Procedure 12.10 concerning the entering of a not guilty plea was abrogated on
28 August 31, 2017.

1 be consistent with Criminal Rule 12.25 (including the proposed amendments to
2 that Rule, *supra*) and would read as follows:

3 **(a) Transmittal.** The foreperson must transmit all physical evidence,
4 including records, presented to or considered by the grand jury to the
5 superior court clerk. The clerk must preserve the evidence and make it
6 available for inspection and viewing by the state, the court, and the
7 defendant.

8 **(b) Release or Retention.** Nothing in this rule is intended to abrogate
9 the right of a person under applicable law to possess or regain custody
10 of physical evidence, but the court must impose limitations on access,
11 use, transport, care, and disposal as necessary to ensure that the
12 evidence is preserved.

13 The proposed changes to the current Criminal Rule 12.25 will be discussed below.

14 **Rule of Criminal Procedure 12.25**

15 This petition proposes amending Criminal Rule 12.25 regarding the
16 preservation of state grand jury evidence in three ways. First, Criminal Rule
17 12.25(a), “Transmittal,” should be amended to read that all physical evidence
18 presented to or considered by the state grand jury should be transmitted by the
19 foreperson to the superior court clerk of the county *in which the state grand jury*
20 *has been impaneled* rather than the county *in which the assignment judge is*
21 *serving*. This is a minor change that more accurately reflects that it is the county in
22 which the state grand jury is empaneled that is the actual determinative factor as to
23 which superior court clerk maintains custody of the state grand jury evidence,
24 rather than the more vague language of “the county in which the assignment judge
25
26
27
28

1 is serving.” (An assignment judge may very well conduct their duties from a
2 different county in which the state grand jury is actually sitting.)

3 Second, this petition proposes amending the second sentence of Rule
4 12.25(a) (consistent with proposed Rule 12.10 for county grand juries) to
5 eliminate the requirement that the superior court clerk must make grand jury
6 evidence available “in the same manner as a transcript of grand jury proceedings.”
7

8 The proposed change will instead only require that the clerk make the evidence
9 available “for inspection and viewing by the state, the court, and the defendant.”
10

11 The rule as currently written, when read in conjunction with A.R.S. §21-411
12 governing grand jury transcripts, can and has been interpreted to mean that grand
13 jury evidence must be provided to prosecutors, defense attorneys, and the
14 defendants themselves upon their request, in the same way that grand jury
15 transcripts must be provided to prosecutors, defense attorneys, and defendants
16 (absent extraordinary circumstances). This rule change will prevent superior court
17 clerk’s from allowing parties to remove evidence from the clerk’s custody and end
18 the practice of permitting parties to “check out” evidence that has been presented
19 to or considered by a grand jury. This is essential to both preserve and maintain
20 the integrity of grand jury evidence.
21

22 Third, this petition proposes to amend paragraph (b) of Rule 12.25 to
23 provide that when circumstances exist where grand jury evidence must leave the
24 custody or control of the superior court clerk, the court must impose restrictions as
25
26
27
28

1 necessary to ensure that the evidence is preserved. The purpose of this change is
2 to ensure court involvement when grand jury evidence is going to be removed
3 from the superior court clerk's custody. It also substitutes "the court" for "the
4 assignment judge" to remove the burden of making these determinations on one
5 specific judicial officer.
6

7 **Rule of Criminal Procedure 12.21**

8

9 With the adoption of a new Criminal Rule 12.10 regarding preservation of
10 grand jury evidence, while retaining (with amendments) Criminal Rule 12.25
11 regarding the preservation of *state* grand jury evidence, Criminal Rule 12.21 will
12 need to be amended to reflect that Rule 12.10 governs over county grand juries,
13 and 12.25 governs over state grand juries.
14

15 Therefore, as set forth in Attachment "A" to this petition, the undersigned
16 petitioner respectfully requests that Rule 12.10 of the Rules of Criminal Procedure
17 be adopted, and Rules 12.7, 12.21, and 12.25 be amended for the reasons set forth
18 in this petition.
19
20
21
22
23
24
25
26
27
28

1 RESPECTFULLY SUBMITTED this 10th day of January, 2025.
2
3

4 

5 Hon. Jennifer E. Green
6 Presiding Judge
7 Criminal Department
8

9 Electronic copy filed with
10 the Clerk of the Arizona Supreme Court
11 this 10th day of January, 2025.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT "A"
(removed language is ~~struck through~~, new language is underlined)

Rules of Criminal Procedure

Rule 12.7. Record of Grand Jury Proceedings

(a) through (c) [no changes]

(d) Grand Juror Names. The full names of grand jurors must not be set forth in grand jury transcripts. Grand jury transcripts may provide only the grand jurors' initials. The superior court clerk must maintain a list of grand jurors' names, but that list must be sealed, and can only be viewed by a judicial officer or by employees of the clerk's office as needed to carry out superior court clerk business. The list of grand jurors' names in state and county grand jury presentations may only be obtained by filing a motion with the court stating the grounds for disclosure and obtaining a court order. In determining whether to grant or deny the motion, the court must consider privacy and safety concerns of the grand jurors.

Rule 12.10. Preservation of Grand Jury Evidence

(a) Transmittal. The foreperson must transmit all physical evidence, including records, presented to or considered by the grand jury to the superior court clerk. The clerk must preserve the evidence and make it available for inspection and viewing by the state, the court, and the defendant.

(b) Release or Retention. Nothing in this rule is intended to abrogate the right of a person under applicable law to possess or regain custody of physical evidence, but the court must impose limitations on access, use, transport, care, and disposal as necessary to ensure that the evidence is preserved.

Rule 12.21. Applicability of Other Provisions of Rule 12

1 The provisions of Rule 12 pertaining to grand juries also apply to state
2 grand juries, except that Rule 12.22(a) ["Summons"] applies instead of Rule
3 12.1(a); Rule 12.22(d) ["Examination"] applies instead of Rule 12.1(b); Rule
4 12.25 ["Preservation of State Grand Jury Evidence"] applies instead of Rule
5 12.10; and Rule 12.28 ["challenge to State Grand Jury Proceedings"] applies
6 instead of Rule 12.8.
7
8

9 **Rule 12.25. Preservation of State Grand Jury Evidence**

10 **(a) Transmittal.** The foreperson must transmit all physical evidence, including
11 records, presented to or considered by a state grand jury to the superior court clerk
12 of the county ~~in which the assignment judge is serving~~ where the state grand jury
13 has been empaneled. The clerk must preserve the evidence and make it available
14 ~~in the same manner as a transcript of grand jury proceedings~~ for inspection and
15 viewing by the state, the court, and the defendant.

16 **(b) Release or Retention.** Nothing in this rule is intended to abrogate any right of
17 a person under applicable law to possess or regain custody of physical evidence,
18 but ~~the assignment judge may~~ the court must impose limitations on access, use,
19 transport, care, and disposal as ~~may be~~ necessary to ensure that the evidence is
20 preserved.
21
22
23
24
25
26
27
28