

**Implementing Constitutional Amendment:
District Attorneys' Informations**

**General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
Harrisburg, Pennsylvania
March, 1974**

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TASK FORCE TO IMPLEMENT CONSTITUTIONAL
AMENDMENT RELATING TO GRAND JURIES

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**GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA
JOINT STATE GOVERNMENT COMMISSION**

**ROOM 450 - CAPITOL BUILDING
HARRISBURG 17120**

March 4, 1974

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

Voters of the Commonwealth on November 6, 1973 overwhelmingly ratified an amendment to Article I, Section 10, of the Pennsylvania Constitution permitting courts of common pleas to initiate criminal prosecutions by district attorneys' informations, rather than by grand jury indictments, in a manner to be prescribed by the General Assembly.

This report of the Joint State Government Commission Task Force to Implement Constitutional Amendment Relating to Grand Juries--appointed pursuant to a resolution of the Commission's Executive Committee adopted November 14, 1973--contains a proposed statute implementing the amendment as well as review of the historical background, existing Pennsylvania law and constitutional and statutory provisions of other states. In preparing this legislation, the task force invited and carefully reviewed the recommendations of members of the judiciary, district attorneys, court officers and interested professional and civic organizations.

The many pertinent suggestions received were most useful and many were incorporated into the proposed bill. The Joint State Government Commission expresses appreciation to all who so promptly responded.

Respectfully submitted,

A handwritten signature in cursive script that reads "Fred J. Shupnik".

Fred J. Shupnik
Chairman
Joint State Government Commission

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IMPLEMENTING CONSTITUTIONAL AMENDMENT:

DISTRICT ATTORNEYS' INFORMATIONS

History of the Amendment

In 1970 the Joint State Government Commission Task Force on Judicial Backlog, under the chairmanship of Senator Clarence D. Bell, proposed an amendment to Article I, Section 10, of the Pennsylvania Constitution, which would authorize courts of common pleas to provide for the initiation of criminal prosecutions by district attorneys' informations.

At hearings before the 1970 task force, witnesses had stressed compelling reasons why district attorneys' informations were necessary substitutes for the traditional grand jury in-
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dictments. They argued that the indicting grand jury

- Substantially delays the criminal process.
- Imposes undue expense on the community.
- Places an unfair burden on grand jurors who must take time off from their employment.
- Has become a superficial screening device in view of the hearsay and other generally second-hand testimony utilized to secure the indictments.

1. See Honorable Samuel Rosenberg, "The Indicting Function of the Grand Jury Should be Abolished," Pa. B.A. Quarterly, Oct. 1970, p. 31; Honorable James Cavanaugh, "Trial Delay and the Grand Jury," The Shingle, Dec. 1970, p. 213; Walton Coates, Esq., "The Pennsylvania Bill of Rights: Revisions Needed," Pa. B.A. Quarterly, June 1971, p. 428.

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- Is usually almost exclusively under the control of the district attorney's office and in effect exercises little independent judgment.
- Lacks the diversity of community representation from minority groups.
- No longer effectively screens out frivolous cases because of the overwhelming workload in the metropolitan areas.

Following adoption of joint resolutions proposing the constitutional amendment in the 1971 and 1973 sessions of the General Assembly, ² the proposed amendment was placed upon the ballot for the general election of November 6, 1973 and overwhelmingly ratified. Article I, Section 10, as amended, now reads:

Initiation of Criminal Proceedings; Twice in Jeopardy; Eminent Domain.--Except as hereinafter provided no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. Each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the

2. Senate Bill 438, Printer's No. 445, introduced by Senator Clarence D. Bell and 16 other Senators, passed the Senate on April 20, 1971 and the House of Representatives on June 9, 1971. Senate Bill 117, Printer's No. 117 (identical to the resolution of the previous session) was introduced in the 1973 session by Senator Louis G. Hill and six others. Following amendment to allow submission at the 1973 municipal election, the bill (Printer's No. 492) passed the Senate on March 26, 1973 and the House of Representatives on July 17, 1973.

initiation of criminal proceedings therein by information filed in the manner provided by law. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured. (Emphasis supplied)

The amendment clearly contemplates that

- The abolition of county indicting grand juries is to be optional with each court of common pleas.³
- A court of common pleas wishing to replace grand jury indictments with district attorneys' informations must obtain the approval of the Supreme Court of Pennsylvania.
- The method of proceeding by information rather than indictment is to be determined by statutory authority-- in other words, "as provided by law."

The term "provided by law" is used consistently throughout the recently adopted Article V of the Pennsylvania Constitution, which establishes the unified judicial system, to differentiate

3. The amendment--which passed by a statewide vote of 897,295 to 552,797--was defeated in 11 counties, among which were Allegheny, Beaver, Butler, Lawrence and Washington. A Pittsburgh newspaper subsequently editorialized that in view of Allegheny County's rejection of the amendment (99,568 to 109,001) a thorough streamlining and modernization of the court's procedures should be effected to achieve a reduction of its backlog.

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statutory authorization from the authority granted to the Supreme Court to prescribe rules relating to judicial administration.⁴

One week after the adoption of the constitutional amendment, the Executive Committee of the Joint State Government Commission, by its resolution of November 14, 1973, directed the appointment of a task force to prepare the necessary implementing legislation. Members of the Task Force to Implement Constitutional Amendment Relating to Grand Juries, appointed on December 7, 1973, recognized the immediate need for their work when the Supreme Court of Pennsylvania on December 17, 1973, per curiam, granted a petition filed by President Judge D. Donald Jamieson of the Court of Common Pleas of Philadelphia, requesting permission for Philadelphia to abolish grand jury indictments as of January 1, 1974 (Eastern District, No. 504, Misc. Dkt. No. 19).

The task force at its organizational meeting on January 8, 1974, authorized the circulation of a preliminary draft of implementing legislation to interested parties and requested their comment. Those receiving the draft included the justices and the administrator of the Supreme Court of Pennsylvania; judges and administrators of the courts of common pleas; State Trial Judges Association; the Attorney General; district attorneys and public defenders; Pennsylvania Bar Association,

4. Cf., Pa. Const., Art. V, Secs. 1, 2, 3, 4, 5, 6, 7, 9, 16 and 17 and Schedule Secs. 1, 2, 4, 7, 12, 13, 15, 16, 17, 18, 20, 21, 25 and 28, "provided by law," with Art. V, Sec. 10, "judicial rule-making."

Criminal Law Section and Constitutional Law Committee; Governor's Justice Commission; League of Women Voters of Pennsylvania; American Civil Liberties Union; and the staffs of the judiciary committees of the Senate and the House of Representatives.

In preparing the implementing legislation for introduction into the General Assembly, the task force considered existing Pennsylvania law, constitutional and statutory provisions of other states and the many suggestions submitted.

Existing Pennsylvania Law

The relevant fundamental law embodied in the Pennsylvania Constitution, Article I, Section 10, requiring grand jury indictment was first introduced in the Constitution of 1790, Article IX, Section 10. That provision was, in effect, identical to the present language prior to the 1973 amendment, including the exception allowing proceedings by information "in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office." The Federal Constitution (Fifth Amendment) excepts from the requirement of grand jury indictment only "cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, . . ."

In White, Constitution of Pennsylvania (1907) it was explained that:

An "information" is a formal accusation filed by a prosecuting officer without the intervention of a grand jury. It was in ancient times used to the oppression of persons who had excited the enmity of the public officers or others, and was looked upon with great disfavor by the founders of our government. At the same time, it was recognized that there are some cases where the occasion or the offense is of such a nature that a proceeding by information is both necessary and proper. The only instances where it has been used in Pennsylvania are in cases of prosecution of public officers for misdemeanor in office. (At 106, 107)

White cites Respublica v. Griffiths, 2 Dall. 112 (1790); Respublica v. Prior, 1 Yeates 206 (1793) and Respublica v. Burns, 1 Yeates 370 (1794)--three cases of prosecutions against members of the minor judiciary for misdemeanor in office--as the instances when the exception had been involved.⁵

Since 1884, the United States Supreme Court has specifically upheld the alternative of initiation of criminal prosecutions by information instead of indictment by grand jury: Hurtado v. Calif., 110 U.S. 516 (1884). The court held that, as long as the method of initiating prosecution protected the "substantial interests of the accused," there was nothing in the United States Constitution compelling all states to proceed exclusively by grand jury indictment. In Bolln v. Nebraska, 176 U.S. 83 (1900), the United States Supreme Court upheld a Nebraska statute which authorized the "several" courts in that state to provide for prosecutions by information rather than indictment. Also see the opinion of the Supreme Court of Nebraska in Jackson v. Olson, 22 N.W. 2d 124

5. See Commonwealth v. Hurd, 177 Pa. 481 (1896) (dicta).

(1946). A Colorado statute still extant in that state, Colorado Revised Statutes, Section 39-4-1, which provides for the initiation of criminal prosecutions by indictment or information concurrently, was upheld by its Supreme Court in In Re Dolph, 28 P. 470 (1891). The court noted that concurrent methods for the prosecution of criminal offenses did not violate the "equal protection of the laws" clause of the United States Constitution (Fourteenth Amendment) when surrounded by proper regulations and safeguards and made applicable without discrimination. Specifically, the court, at 472, stated:

No constitutional provision has been cited forbidding indictments and informations as concurrent remedies when surrounded by proper regulations and safeguards. So far as the legislation applicable to the case under consideration is concerned, neither the prosecuting attorney nor any other officer is authorized to exercise an arbitrary discretion in the matter of instituting criminal prosecutions. The two systems of criminal procedure have been maintained in other states, and no sufficient reason has been advanced to justify us in holding unconstitutional the legislation authorizing their retention in this state.

While obviously no Pennsylvania authorities exist, it is clear that in the absence of arbitrary or discriminatory applications, the optional feature of the amendment to Article I, Section 10, of the amendment to the Pennsylvania Constitution does not violate federal (Fourteenth Amendment) constitutional requirements of "equal protection of the laws," or "due process."

Further, the recently adopted Article V of the Pennsylvania Constitution, in Schedule Section 16(r)(iii), provided

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for a differentiated procedure in Philadelphia's Municipal Court for defendants accused of crimes carrying a maximum sentence of not more than two years.⁶ In those cases a defendant is tried prior to indictment by a grand jury. Only after an appeal from his conviction for a trial de novo before a jury in the court of common pleas is the matter presented to a grand jury. The United States Supreme Court in Colten v. Kentucky, 407 U.S. 104 (1972) upheld a similar practice as not unconstitutional; the Pennsylvania constitutional and statutory provisions relating to the municipal court's procedure were specifically noted.

Since the Pennsylvania Supreme Court, through its Criminal Procedural Rules Committee, has promulgated specific procedures, many of which would be applicable to criminal prosecutions whether initiated by indictment or information, those provisions have been thoroughly reviewed. A revision of these rules to include the procedure in a judicial district which has been authorized to proceed by information was promulgated by the Supreme Court on February 15, 1974. Rules 225 through 240 are set forth in Appendix A, at p. 19. These revisions will help to prevent any confusion between jurisdictions implementing the new procedure and those retaining grand jury indictments. The Supreme Court's constitutional

6. Since increased by statute to five years: 1969, October 17, P. L. 259, Section 18, as amended 1971, July 14, P. L. 224, Act No. 45.

responsibility for rule-making was acknowledged from the outset by the task force in its deliberations and recommendations for implementing the constitutional amendment.

Provisions of Other States

It would appear that 21 other states have specific constitutional provisions authorizing the prosecution of criminal proceedings by district attorneys' informations. The supreme courts of two have sanctioned this method of criminal procedure even though no specific constitutional authority exists. Table 1, at p. 10, contains the pertinent constitutional, statutory and rule citations for each of the 23 states.

Task Force Recommendations

After studying the existing law in Pennsylvania, the present rules of criminal procedure, the constitutional and statutory provisions of other states, and particularly the cogent and helpful comments of judges, district attorneys, court officials and attorneys who responded to the preliminary version circulated through the Commonwealth, the task force recommends an implementing statute which would accomplish the following:

- (1) Supply the jurisdiction to the courts which elect to proceed with district attorneys' informations and which obtain the approval of the Supreme Court to do so.

Table 1

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES
RELATING TO DISTRICT ATTORNEYS' INFORMATIONS

State (1)	Constitution (2)	Statute/Rules (3)
Arizona	Art. II, Sec. 30	17 A.R.S. R.Crim.P. Rules 13.1-13.5
Arkansas	Art. II, Sec. 8	Ark. Stat. Anno.,
California	Amendment 21 Art. I, Sec. 8	43-806 West Anno. Penal Code, Sec. 739
Colorado	Art. II, Sec. 8	Colo. Rev. Stat., 39-4-1 to 39-4-10
Connecticut	Art. I, Sec. 8 (Except for offenses for which maximum penalty is life imprisonment)	Gen. Stat. of Conn., 54-42 to 54-76
Florida	Declaration of Rights, Sec. 10	Fla.R.Crim. P., 3.140
Idaho	Art. I, Sec. 8	Idaho Code, 19-1301 to 19-1308
Indiana	Art. VII, Sec. 17	1973 P.L. 325, Art. 3.1
Kansas	Prosecution by informa- tion upheld: <u>Sims v.</u> <u>Hudspeth</u> , 203 P.2d 129 (1949)	K.S.A., 22-3201 to 22-3208
Louisiana	Art. 1, Sec. 9	La. Code of Crim.P., Art. 461 to 495
Maryland	Declaration of Rights, Art. XXI	Anno. Code of Md., Md.R.Crim., Rule 708
Michigan	Legislature permitted to experiment with different methods of initiating prosecution: <u>In Re Palm</u> , 238 N.W. 732 (1931)	M.S.A., 28.941, 28.942, 28.980, 28.981, 28.982, 28.985
Missouri	Art. I, Sec. 17	V.A.M.S., 24.01 to 24.19
Montana	Art. III, Sec. 8	Rev. Codes of Mont., 95-1501 to 95-1507
Nebraska	Art. I, Sec. 10	Rev. Stat. of Neb., 29-1601 to 29-1608
Nevada	Art. I, Sec. 8	Nev. Rev. Stat., 173.015 to 173.135
New Mexico	Art. II, Sec. 13	N.M.S.A., 41-23-5 to 41-23-12 (Rule)
Oklahoma	Art. II, Sec. 17	22 Okla Stat. Anno., 401 to 439
Rhode Island	Art. I, Sec.8	Not yet implemented
South Dakota	Art. VI, Sec. 10	S.D.C.L., 23-32-1 to 23-32-27
Utah	Art. I, Sec. 13	U.C.A., 77-16-1 and 77-16-2, 77-17-1 to 77-17-4
Washington	Art. I, Sec. 25	R.C.W., 10.37.010 to 10.37.190
Wyoming	Art. I, Sec. 13	Wyo. Stat., 7-118 to 7-147

In this connection the jurisdiction of a court to proceed in "the manner provided by law" with district attorneys' informations must be statutorily supplied in the light of Pennsylvania Constitution, Article V, which sets forth the Supreme Court's broad power to "prescribe general rules governing practice, procedure and the conduct of all courts, . . . if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court . . ." (Section 10(c))

Other states have specifically statutorily granted jurisdiction to their courts to proceed by information; e.g., Nebraska, Rev. Stats., Sec.29-1601.

- (2) Establish the scope of the act and acknowledge the responsibility of the Supreme Court through its Criminal Procedural Rules Committee to provide the rules governing the practice and procedure to be utilized by the district attorney.
- (3) Retain existing procedures and practices insofar as possible to minimize the confusion which could otherwise result.

Though there are numerous references to the indictment procedure contained in existing law, the

rules of criminal procedure promulgated by the Supreme Court have preempted this field, so that no specific amendments to these statutory references to include informations are required.

Any statutory reference to indictments not within the rules of criminal procedure which are still viable would be applicable to informations, unless an inherent inconsistency is apparent.

- (4) Require the district attorney to fully inquire into the facts and circumstances of each case prior to filing his information.

The Nebraska statute (Sec. 29-1606) places a duty upon the district attorney to carefully review each transcript returned for court action as fully as he would have done if he were preparing his case for presentment to a grand jury. It is hoped that careful evaluation at this stage of the criminal proceedings will reduce the criminal system's backlog by providing for alternative dispositions in cases which do not warrant public expenditures to process through trial and appeal stages.

In addition to dismissal of the proceeding, the district attorney in an appropriate case may alternatively dispose of the matter through the Accelerated Rehabilitative Disposition program provided by the present rules of criminal procedure (Pa. R. Crim.

P. 175 et seq.) or other alternatives to prosecution, such as that set forth in The Controlled Substance, Drug, Device and Cosmetic Act, 1972, April 14, Act No. 64, Section 18, as amended 1972, October 26, Act No. 263.

- (5) Preserve the defendant's existing right to a preliminary hearing prior to the information/indictment stage.
- (6) Retain existing law and practices with regard to all functions of grand juries, other than their "indicting" function, including their power to investigate offenses against the criminal laws.

The important functions of an "investigating grand jury" were recently discussed by the United States Supreme Court in United States v. Calandra, 94 S.Ct. 613 (1974). A comprehensive statute governing "investigating grand juries" is proposed in Senate Bill 119 (1973) which has passed the Senate and is presently before the House of Representatives' Law and Justice Committee.

At the present time, a miscellany of duties have been statutorily placed upon grand juries, usually with reference to specific public buildings or structures, such as bridges. While most of these existing statutory references to these duties of grand juries,

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which are set forth in Appendix B, p. 23, appear to be no longer necessary, the task force specifically determined not to affect these specifically provided-for miscellaneous duties.

The above recommendations have been incorporated into a proposed bill for introduction into the General Assembly for action.

PROPOSED STATUTE

AN ACT

Implementing the amendment to Article I, Section 10, of the Constitution of the Commonwealth of Pennsylvania, authorizing courts of common pleas with the approval of the Supreme Court to provide for the initiation of criminal proceedings by a district attorney's information instead of by grand jury indictment; providing for the manner of filing such information; placing duties on the courts, district attorneys and officers of the court.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Jurisdiction; clerk.--The several courts of common pleas which have obtained the approval of the Supreme Court of Pennsylvania to provide for the initiation of criminal proceedings by district attorneys' informations instead of by grand jury indictments, shall possess and exercise the same power and jurisdiction as they heretofore possessed in cases of prosecutions upon indictments. The clerk of the court or the officer of the court designated by it, shall file the transcript of proceedings, complaint and all related papers received by it, receive and file informations presented by the district attorney, and record all business of the court relative to criminal prosecutions.

Section 2. Scope of the act.--This act shall not affect criminal proceedings held before the Municipal Court of Philadelphia, district justices of the peace and magistrates, as

now provided by law and rules of criminal procedure, nor, except as herein provided, shall it affect criminal proceedings subsequent to the filing of the information by a district attorney. Except as otherwise provided in this act or to the extent that they are specifically inconsistent with prosecutions initiated by information, existing statutory law applicable to criminal prosecutions initiated by indictment shall be applicable to the information filed by a district attorney hereunder.

Section 3. Duty of district attorney to examine each transcript returned; necessity of preliminary hearing.--(a) Whenever a transcript of proceedings, complaint and all related papers in a criminal proceeding where the defendant has been held for court have been transmitted to the clerk of the common pleas court or the court's designated officer, he, after recording same, shall immediately transmit the documents or a copy thereof to the district attorney. The district attorney shall have the duty to inquire into and make full examination of all the facts and circumstances connected with each such case to determine if the facts and circumstances warrant the filing of an information or informations premised upon the transcript.

(b) No information shall be filed by the district attorney concerning alleged criminal violations where a preliminary hearing has not been held or properly waived except in the following cases:

(1) When the preliminary hearing cannot be held for the defendant because the defendant cannot be found in the Commonwealth or the statute of limitations will run prior to the time when a

preliminary hearing can be held or a preliminary hearing cannot be held for other good cause; in each of the foregoing cases, the district attorney prior to filing the information shall obtain leave of the court to do so; or

(2) When an investigating grand jury has recommended that an information or informations be filed, and in such other cases as provided by law or rules of criminal procedure where an indictment could have been obtained without the defendant having the right to a preliminary hearing.

Section 4. District attorney's disposition of cases.--The district attorney shall sign all informations. The information shall be filed in such form as the rules of criminal procedure provide. After the filing of the information, he shall not enter a nolle prosequi or dispose of any criminal cases or discharge a prisoner from custody by means of a proceeding in lieu of plea or trial without having obtained the approval of the court.

Section 5. Investigating grand juries not affected.--No grand jury shall be impaneled in any judicial district where this act is applicable for the purpose of considering bills of indictment: Provided, however, That nothing in this act shall prohibit the impaneling as heretofore of, or affect the functioning of, a grand jury for the purpose of investigating offenses against the criminal laws of the Commonwealth or for any other purpose as provided by law.

Section 6. Effective date; repealer.--This act shall take effect immediately but shall be applicable only in those judicial districts which have obtained the approval of the Pennsylvania Supreme Court to substitute informations for grand jury indictments as the method for initiating criminal prosecutions. Thereafter, all acts and parts of acts inconsistent herewith shall not apply in said judicial districts.

APPENDIX A

PENNSYLVANIA RULES OF CRIMINAL PROCEDURE ADDED FEBRUARY 15, 1974*

PART III: INFORMATIONS
RULE 225. INFORMATION: FILING, CONTENTS, FUNCTION

(a) In counties in which the indicting grand jury has been abolished, after the defendant has been held for court, the attorney for the Commonwealth either shall move to nolle prosequi the charges or shall proceed by preparing an information and filing it with the court of common pleas.

(b) The information shall be signed by the attorney for the Commonwealth and shall be valid and sufficient in law if it contain:

(1) a caption showing that the prosecution is carried on in the name of and by the authority of the Commonwealth of Pennsylvania;

(2) the name of the defendant, or if he is unknown, a description of him as nearly as may be;

(3) the date when the offense is alleged to have been committed if the precise date is known, and the day of the week if it is an essential element of the offense charged, provided that if the precise date is not known or if the offense is a continuing one, an allegation that it was committed on or about any date within the period fixed by the statute of limitations shall be sufficient;

(4) the county where the offense is alleged to have been committed;

(5) a plain and concise statement of the essential elements of the offense substantially the same as or cognate to the offense alleged in the complaint; and

(6) a concluding statement that "all of which is against the Act of Assembly and the peace and dignity of the Commonwealth".

(c) The information shall contain the official or customary citation of the statute and the section thereof, or other provision of law which the defendant is alleged therein to have violated; but the omission of or error in such citation shall not affect the validity or sufficiency of the information.

(d) In all court cases tried on an information the issues at trial shall be defined by such information.

COMMENT: The Act of March 31, 1860, P.L. 427, § 29, 19 P.S. § 492, prohibits the district attorney from entering a nolle prosequi on a bill of indictment without court permission, either before or after grand jury approval. In counties in which the indicting grand jury has been abolished and informations are used, court permission shall be obtained by the district attorney before entering a nolle prosequi on the information.

When there is an omission or error of the type referred to in paragraph (c), the information should be amended pursuant to Rule 229.

* In addition to the pertinent new rules for proceeding by information--rules 225 through 240--which have been set forth in this appendix, the following rules or comments to rules have been modified to reflect the alternative of proceeding by information: 3, 27, 101, 175, 176, 178, 180, 181, 200, 212, 213, 214, 219, 221, 222, 223, 224, 311, 314, 316, 317, 1120, and 1501.

RULE 226. FORM OF INFORMATION

Every information shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS
COUNTY OF _____
Criminal Action No. _____ of 19____
COMMONWEALTH OF PENNSYLVANIA
v.
John Doe

The district attorney of _____ County by this information charges that on
(or about) _____, 19____, in said County of _____ John Doe _____
did _____

_____ all of which is against the Act of Assembly and the peace and dignity of the Commonwealth.

Attorney for the Commonwealth

Citation of statute and section

RULE 227. COPY OF INFORMATION TO BE FURNISHED DEFENDANT

The clerk of court shall, upon request, furnish each defendant against whom an information or informations have been filed with a copy of the information or informations filed against him.

RULE 228. JOINDER OF OFFENSES AND DEFENDANTS IN INFORMATIONS--SEVERANCE

(a) When murder is alleged in an information no other counts may be joined in the information except voluntary and involuntary manslaughter.

(b) Two or more offenses, of any grade, other than murder, may be charged in the same information if they are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan. There shall be a separate count for each offense charged.

(c) Subject to the limitations of paragraph (b), two or more defendants may be joined in the same information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. They may be charged in one or more counts together or separately. All defendants need not be charged in each count.

(d) The court, of its own motion, or on application of a party, may order separate trials of counts, grant a severance as to any defendant, or provide other appropriate relief.

RULE 229. AMENDMENT OF INFORMATION

The court may allow an information to be amended when there is a defect in form, the description of the offense, the description of any person or any property, or the date charged, provided the information as amended does not charge an additional or different offense. Upon amendment the court may grant such postponement of trial or other relief as is necessary in the interests of justice.

RULE 230. BILL OF PARTICULARS--INFORMATION

(a) A bill of particulars should be furnished by the attorney for the Commonwealth within two (2) days after service upon him of a copy of a written request by a defendant. The request shall contain:

- (1) the name of the defendant;
- (2) the term and number of the information;
- (3) the specific particulars sought by the defense; and
- (4) the reasons why the particulars are requested.

The request shall be filed with the clerk of courts prior to service upon the attorney for the Commonwealth.

(b) Upon failure of the attorney for the Commonwealth to furnish a bill of particulars after service of a request upon him, the defendant may make written application for relief to the court within ten (10) days after such service. If further particulars are desired after an original bill of particulars has been furnished, an application therefor may be made to the court within ten (10) days after the original bill is furnished.

(c) When an application for relief is made, the court may make such orders as it deems necessary in the interests of justice.

RULE 231. PRESENTATION OF INFORMATION WITHOUT PRELIMINARY HEARING

When the attorney for the Commonwealth certifies to the court of common pleas that a preliminary hearing cannot be held for a defendant because the defendant cannot be found in the Commonwealth or that the statute of limitations will run prior to the time when a preliminary hearing can be held or that a preliminary hearing cannot be held for other good cause, the court may grant leave to the attorney for the Commonwealth to file an information with the court without a preliminary hearing.

COMMENT: The objectives of this Rule are to establish a procedure to be followed in those situations in which a preliminary hearing cannot be held and those situations in which an accelerated information, after the filing of a complaint or before a preliminary hearing can be held, will be required to prevent the running of the statute of limitations under the applicable provisions of the Crimes Code (found at 18 P.S. § 107).

This Rule is not intended to govern the procedure to be followed in cases involving investigating grand juries. See generally Commonwealth v. McCloskey, 443 Pa. 117, 277 A.2d. 764 (1971).

For comparable provision in cases proceeded upon by indictment, see Rule 224.

RULE 232. APPLICATION OF INDICTMENT STATUTES TO INFORMATION

The term "indictment" in any statute shall be construed to include the term "information" unless the purpose of the statute manifestly relates only to indictment by grand jury.

COMMENT: For definition of "information", see Rule 3.

RULE 240. SUSPENSION OF ACTS OF ASSEMBLY--CHAPTER 200

The following Acts of Assembly are hereby suspended:

- (a) The Act of April 14, 1834, P.L. 333, § 109, 17 P.S. § 1032, and

The Act of April 16, 1925, P.L. 244, § 5, as amended by the Acts of April 11, 1929, P.L. 495, § 1, and July 2, 1937, P.L. 2782, § 3, 17 P.S. § 1325, and

The Act of May 17, 1939, P.L. 157, § 5, as amended by the Act of April 3, 1968, P.L. 41, § 2, 17 P.S. § 1336,

insofar as the said Acts are inconsistent with Rule 200.

- (b) The Act of March 18, 1875, P.L. 28, § 2, as amended by the Act of April 27, 1927, P.L. 420, § 2, 17 P.S. § 1351,

insofar as it is inconsistent with Rule 204.

- (c) The Act of March 31, 1860, P.L. 427, § 10, 19 P.S. § 731,

insofar as it is inconsistent with Rule 207.

- (d) The Act of March 31, 1860, P.L. 427, § 19, 19 P.S. § 331,

insofar as it is inconsistent with Rule 213 and Rule 225.

- (e) The Act of April 15, 1907, P.L. 62, § 1, as amended by the Act of June 15, 1939, P.L. 400, § 1, 19 P.S. § 241, as being inconsistent with Rule 215.

- (f) The Act of March 31, 1860, P.L. 427, § 35, 19 P.S. § 782.

insofar as it is inconsistent with Rule 218 and Rule 227.

- (g) The Act of June 24, 1939, P.L. 872, § 703, 18 P.S. § 4703,

insofar as it is inconsistent with Rule 219 and Rule 228.

- (h) The Act of February 24, 1847, P.L. 164, §§ 2 and 3, 19 P.S. §§ 1421 and 1422,

insofar as they are inconsistent with Rule 225.

COMMENT: The statute in paragraph (g), previously suspended by former Rule 223(3), was repealed by the Crimes Code of 1973. However, the suspension remains in effect as to cases which are instituted subsequent to the repeal but which charge criminal acts set forth in the statute which allegedly occurred prior to such repeal.

STATUTORY FUNCTIONS OF GRAND JURIES OTHER THAN INDICTING AND INVESTIGATING

Counties Affected	Grand Jury Function	Statutory Authority
Philadelphia and Allegheny	Approval of veterans' memorial or monument *	1921 P.L. 32, §1; 1905 P.L. 140, §§1 & 6, as last amended 1913 P.L. 301, §1
Philadelphia	Approval to repair public building	1834 P.L. 537, §11
	Approval to erect county buildings *	1834 P.L. 537, §10
	Approval of purchase of land for public buildings *	1883 P.L. 58, §1, as amended 1921 P.L. 271, §1
	Approval to erect workhouse *	1895 P.L. 377 (No. 269), §1
	Bridge in two counties — approval of grand jury in each county	1836 P.L. 551, §46, as amended 1907 P.L. 185, §1
	Joint erection of bridges by two counties or city and county — approval of grand jury in each county	1925 P.L. 667, §§1 and 2
	Approval of vacation of existing bridge and construction of joint county bridge	1923 P.L. 454, §2
	Approval of guard walls too expensive for city to handle	1878 P.L. 150 (No. 190), §1
	Inspect prison	1835 P.L. 232, §8
Third- to eighth-class counties	Approval to purchase property for care of indigent, delinquent and neglected children	1921 P.L. 666 (No. 281), §1, amended 1931 P.L. 22, §1
All except third-through eighth-class counties	Approval of erection of bridge over or under railroad if too expensive for one or two townships to support	1903 P.L. 164, §1
All counties	Approval of morgue *	1955 P.L. 323, §2390 1953 P.L. 723, §2590
	Approval to take over a highway	1961 P.L. 1389, Art. IV, §404
	Approval to expend funds for county bridges destroyed by flood	1905 P.L. 192, §1
	Approval of construction, repairs, maintenance and taking over by counties of highways	1945 P.L. 1242, Art. V, §502

* Requires approval of two successive grand juries.

