



Virtual Grand Jury Pilot Program

July 27, 2020

Background

The COVID-19 pandemic forced the New Jersey courts to suspend in-person court proceedings in mid-March 2020.

High-volume areas – landlord/tenant, Municipal, and jury – were among the first suspensions.

In-person grand jury selections and sessions are suspended at least through September 20, 2020 (based on the Court's July 24, 2020 Seventh Omnibus Order).

Background

The suspension of grand juries and new jury trials prevents criminal cases from moving forward during the evolving public health crisis.

Chief Justice Stuart Rabner and the New Jersey Supreme Court are committed to resuming grand jury and petit jury processes to protect the rights of criminal defendants and victims who deserve timely justice.

Background

Chief Justice Rabner established the Supreme Court Working Group on Remote Grand Jury Operations in May 2020, led by Assignment Judge Ernest Caposela and Assignment Judge Jeanne Covert.

The Working Group includes members of the Attorney General's Office, the Public Defender's Office, the County Prosecutors Association, the Association of Criminal Defense Lawyers of New Jersey, and the New Jersey State Bar Association.

Background

The Working Group was asked to develop recommendations for **a temporary protocol** for grand jury operations during the pandemic.

The Court has confirmed that any interim option will conclude as soon as the emergency associated with COVID-19 has subsided and normal in-person grand jury operations can resume.

Background

The Working Group explored options for resuming grand juries, including:

- Fully virtual (video) proceedings;
- Hybrid – virtual and in-person proceedings; and
- Use of non-Judiciary locations (e.g., gymnasiums).

The Working Group solicited input from the National Center for State Courts Center for Jury Studies. It considered options contemplated or implemented by other jurisdictions, including the federal courts.

Grand Jury Volume – State vs. Federal

In normal (pre-COVID) times, there are 53 sitting grand juries in New Jersey State courts, with more than 1200 jurors reporting in person to our courthouses.

Each of New Jersey's 15 vicinages returns a larger number of indictments than the entire federal District of New Jersey.

A typical vicinage handles more grand jury cases with less space than the federal courts.

Recommendation for Virtual Grand Juries

The Working Group recommended a pilot program for virtual grand jury proceedings, starting with grand juries that were empaneled before COVID-19.

The recommendation to the Supreme Court was conditioned on the provision of technology to enable **all** grand jurors to participate.

Virtual Grand Jury Pilot Program

By Order dated May 14, 2020, the Court authorized a pilot program for virtual grand juries, starting in Bergen and Mercer Counties.

The Court-approved pilot program requires that technology (including Broadband) be provided to grand jurors as necessary.

It also requires a supplement to the grand jury charge and the oath of secrecy, as promulgated on May 15, 2020, to address virtual proceedings.

Virtual Grand Jury Pilot Program

The Court in a series of Orders refined and expanded the pilot program, including to authorize virtual selection and to cover State Grand Jury.

Existing (pre-COVID) grand juries have convened in Bergen and Mercer Counties for several weeks. The first State Grand Jury panels are scheduled to reconvene in the coming weeks.

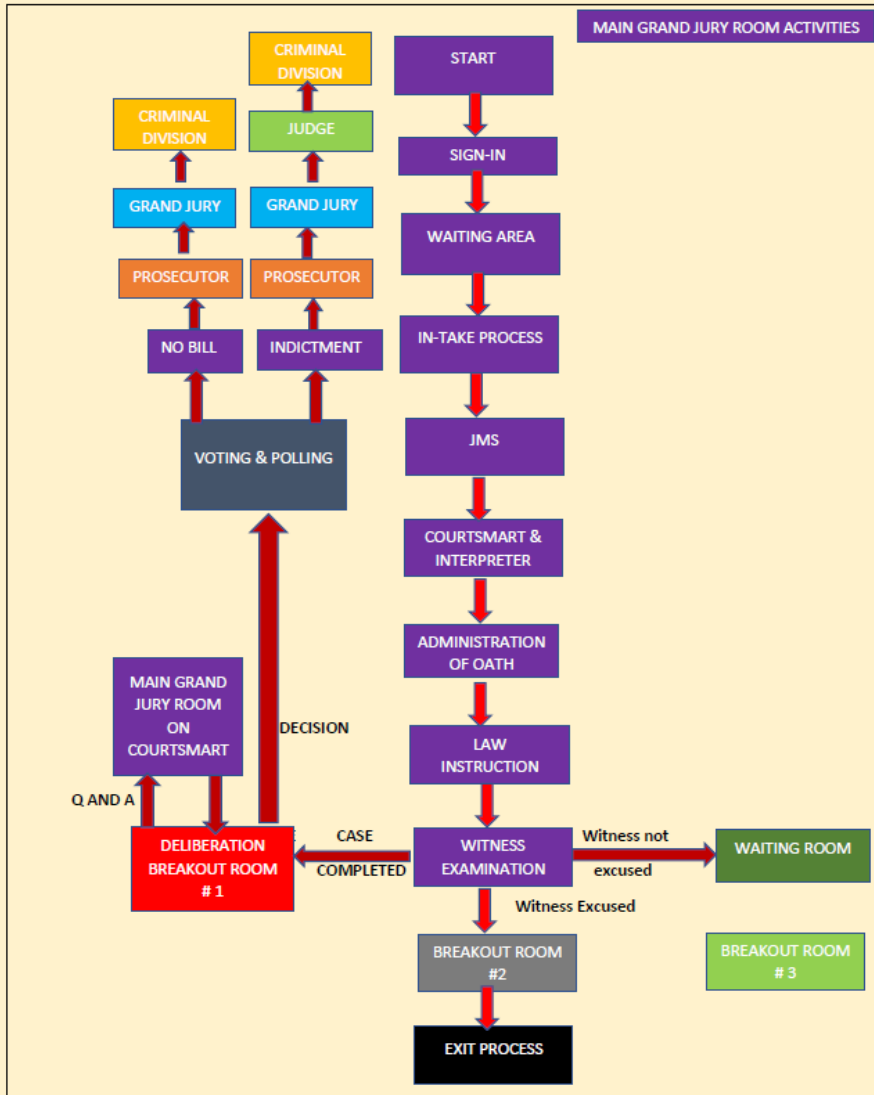
Overview – How it Works

Virtual grand jury proceedings (sessions and selection) are conducted using a secure Zoom platform.

Trained Judiciary staff moderate the initial sessions, including re-orientation.

The Assistant Prosecutor presenting the case takes over for grand jury sessions, with Judiciary staff available to perform routine functions.

VIRTUAL GRAND JURY - PROCEEDING



The Court approved the specific flow for grand jury proceedings conducted via Zoom, which replicates the in-person process in terms of which portions are recorded (e.g., charge; oath; questioning) and which are private (e.g., deliberations).

Zoom breakout rooms also are used for witnesses waiting to testify and for Murphy hearings.

Supporting Participation in Virtual Grand Jury

The Supreme Court is committed to ensuring representative and inclusive grand juries.

The Attorney General funded procurement of technology for initial county-level grand juries and State Grand Jury.

The Judiciary configures, administers, and delivers devices and Broadband to jurors without a tablet or laptop with functioning web camera.

IT staff provide training to make sure that jurors can access Zoom and know how to join the virtual sessions.

Assessing Technology Needs

Jury Staff ask (orally or by email) the following:

1. Do you have a laptop, tablet, smartphone or other technology with Internet access?
2. Do you have private, uninterrupted access to the Internet for a few hours?
3. If you have an electronic device, does it have a functioning web camera?
4. Do you have experience with web conferencing platforms like Zoom or Skype?

Jurors never are excluded based on their technology. Rather, the Judiciary provides technology if and as needed.

Distribution of Technology

Two grand jury panels have reconvened virtually in Bergen County (one concluded; one ongoing), plus one ongoing grand jury panel in Mercer County.

The Judiciary has distributed technology (tablets, Broadband, web cameras) to **11** grand jurors in Bergen and Mercer Counties. Another **10** jurors received technology to participate in upcoming State Grand Jury sessions.

Every available grand juror has been supported in participating – no juror has been excluded.

Juror Feedback on Virtual Process

We have incorporated a number of checkpoints to ensure that technology issues do not interrupt or inhibit the grand jury process.

The foreperson polls the grand jury before and after deliberations to confirm that technology worked effectively.

Jurors complete a survey after each session, including on technology and other factors.

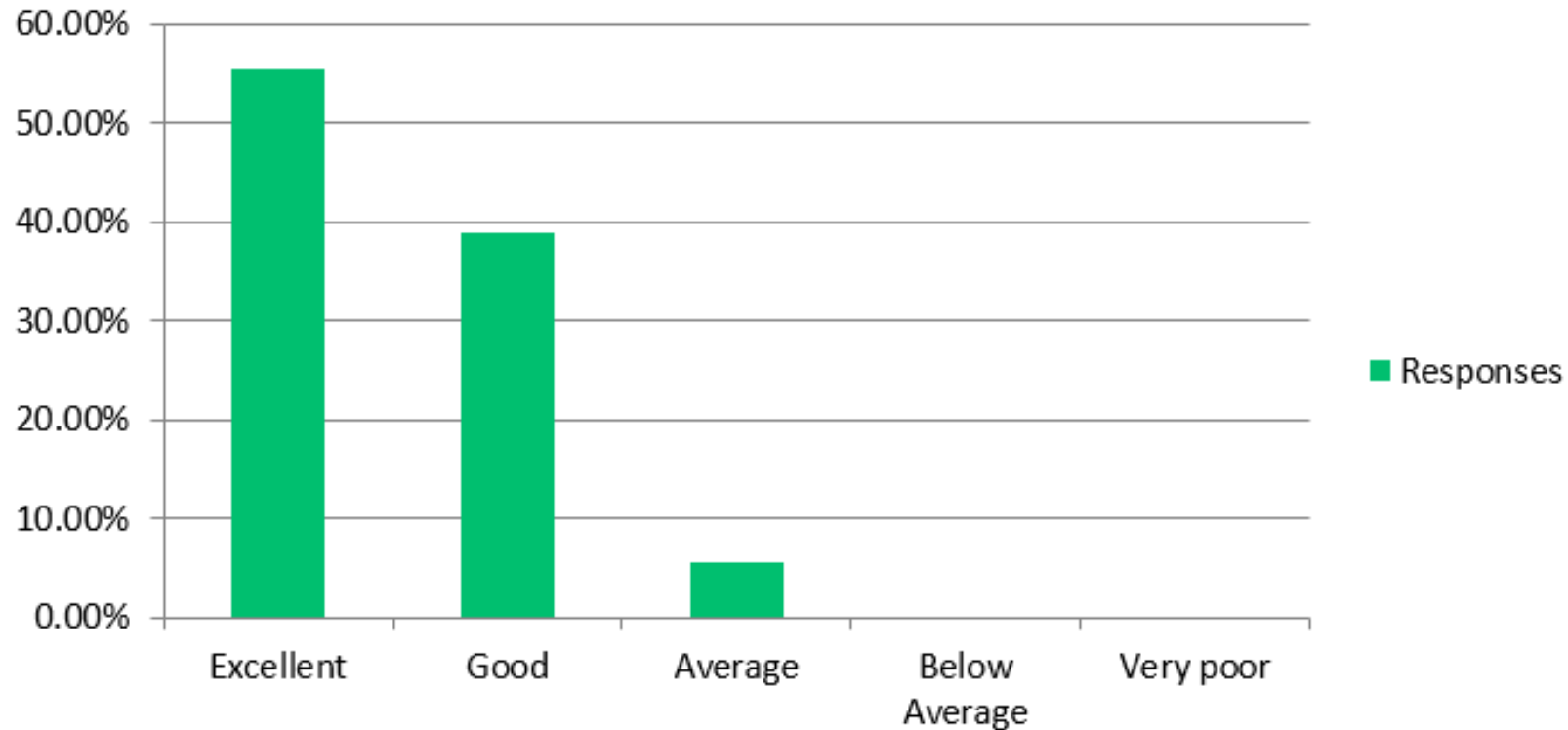
Juror Feedback on Virtual Process

Zoom technology has worked reliably in Bergen and Mercer Counties, after some initial support to assist jurors in signing on during preliminary testing.

Jurors have favorably reviewed the virtual program, with evaluation results improving with each session.

Survey of Concluded Grand Jury Panel (n18)

How would you rate the technology used for virtual appearance?



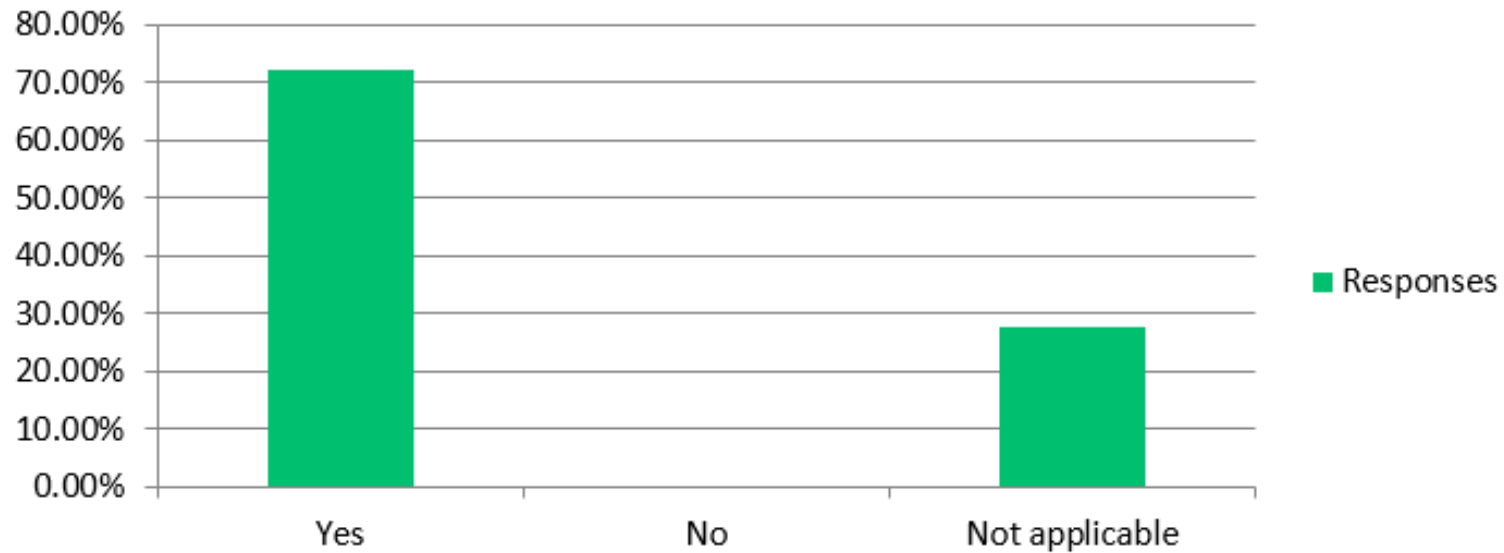
Survey of Concluded Grand Jury Panel (n18)

100% of responding grand jurors reported:

- They had no technical difficulties that interfered with the Grand Jury process that were not quickly corrected
- They were able to see and hear the proceedings
- They were able to communicate with each other, including for deliberations
- They complied with the oath of secrecy, including by not permitting others to see or hear the Grand Jury proceedings

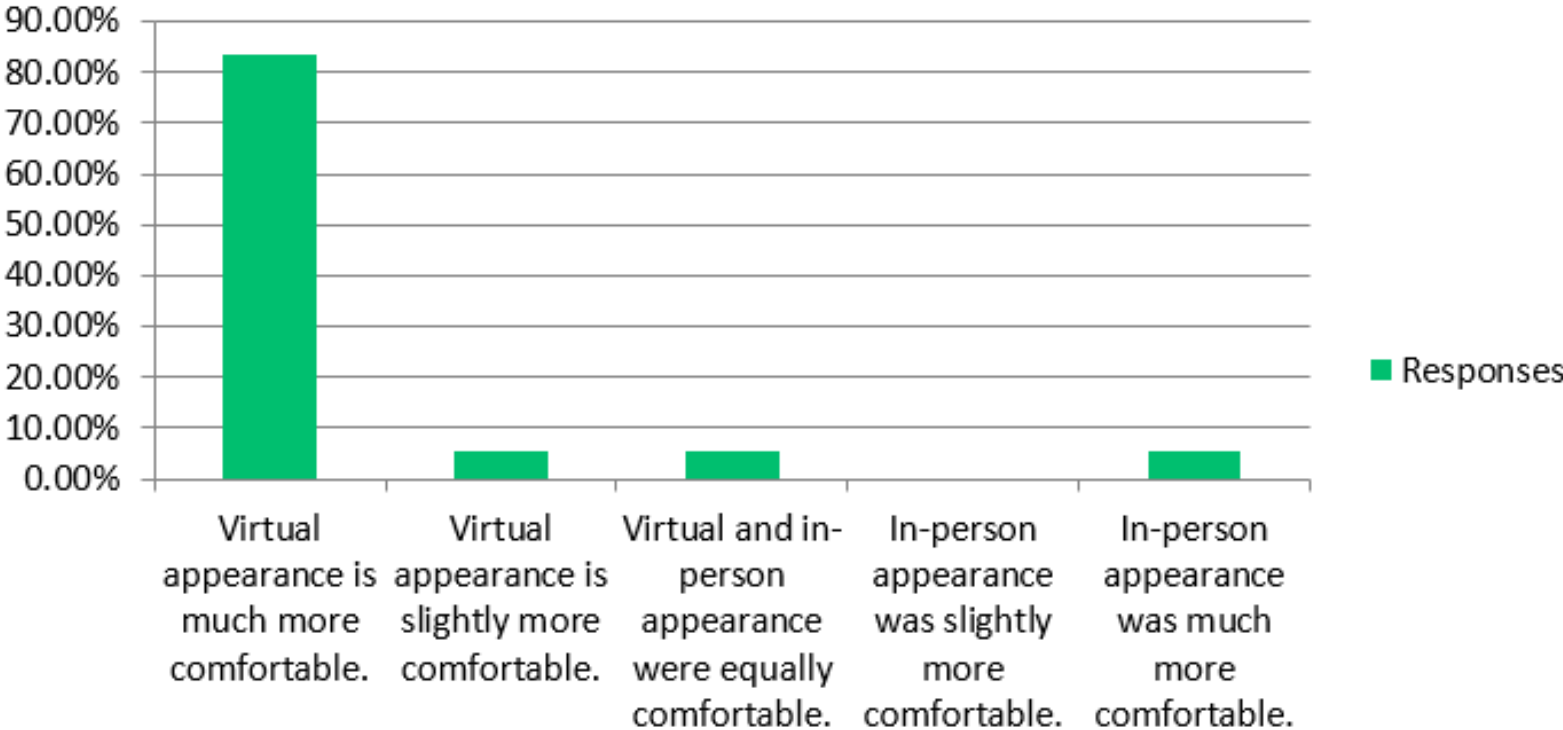
Survey of Concluded Grand Jury Panel (n18)

If applicable, were you able to ask questions of the witness, prosecutor, foreperson, or others during the virtual Grand Jury process?



Survey of Concluded Grand Jury Panel (n18)

Which did you find more comfortable for reporting during the pandemic?



Cases Presented to the Virtual Grand Jury

The county-level grand juries have handled **81** cases, returning true bills and full and partial no bills based on careful consideration of the evidence.

To avoid Zoom fatigue, the grand jury panels convene for no more than a few hours, handling 8-10 cases/session.

Cases Presented to the Virtual Grand Jury

As recommended by the Working Group and approved by the Supreme Court, the first cases were simple and straightforward.

Recent matters include both detained defendants and defendants on release, involving charges from drug offenses to robbery to homicide.

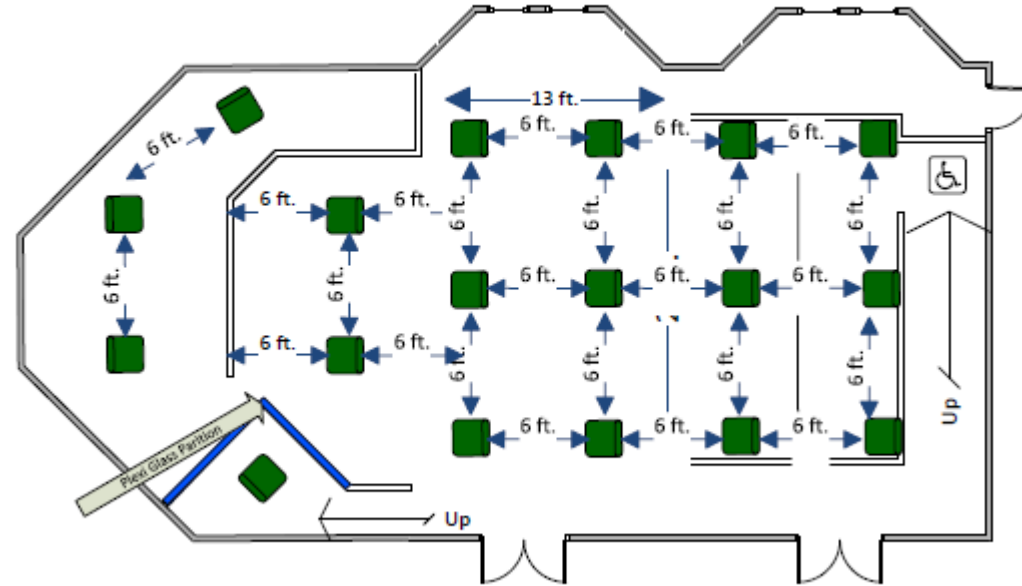
Challenges to In-Person Proceedings

Some other jurisdictions have convened grand juries in person, including in courthouses.

The Judiciary has surveyed all vicinages and used Computer Assisted Design (CAD) to evaluate capacity for seating consistent with required social distancing of 6 feet.

In-person grand juries in courthouses are not feasible for New Jersey.

Example – Passaic’s New Grand Jury Room



This large room can accommodate no more than 18 people -- not enough for a grand jury panel (even without other participants).

Challenges to In-Person Proceedings

Even if a courthouse has a location large enough for grand jury proceedings, the Judiciary must prioritize the resumption of jury trials while supporting ongoing remote and in-person non-trial proceedings such as grand jury.

This necessary balancing requires that matters that can be handled virtually be handled in that format.

Challenges to In-Person Proceedings

Very few courtrooms are large enough to accommodate jury trials, especially criminal trials involving 14 or more jurors.

As we gradually resume in-person trials, it will be necessary to allocate multiple courtrooms for each trial – including rooms with Courtsmart turned off (for deliberations) and for sidebar.

Most other rooms must be reserved for non-trial proceedings (both in-person and remote).

Challenges to In-Person Proceedings

- As we begin preparing for jury trials, we will coordinate walkthroughs of vicinage courthouses so that attorneys (and parties) understand space limitations.
- In all cases, the Judiciary will adhere to public health recommendations as to social distancing.

Non-Judiciary Locations

- The Working Group considered alternatives other than virtual grand jury proceedings, including grand juries meeting in non-Judiciary locations.
- That option was not endorsed based on concerns with securing those facilities and the Judiciary's lack of authority to require sheriffs to simultaneously secure the courthouse and other locations.

Need for Consistency

- In addition to the problems with an unfunded mandate, there is a need for a uniform approach – especially since COVID-19 may flare up in any county over the coming months.
- The pilot program has demonstrated that the virtual model works for grand juries.
- Moving forward simultaneously with in-person grand juries in some counties and virtual grand juries in other locations would unnecessarily create questions about different processes.

Acknowledged Concerns

- Secrecy is crucial to the grand jury process – and while the Judiciary can assure the confidentiality of the technological process, not all risks can be perfectly eliminated.
- There is a risk of grand jurors attempting to defeat secrecy by surreptitious recording of proceedings – and that risk exists in in-person and virtual events.
- The Court determined that the safeguards integrated in the virtual grand jury process mitigate against risks to secrecy. The Court also acknowledged risks to juror security and secrecy of proceedings in any non-Judiciary location.

Next Steps

- The Judiciary is continuing to support virtual court events while gradually resuming some onsite presence and limited in-person proceedings.
- Jury staff in all counties will be trained on effective use of the Zoom platform.
- The Court will determine how grand juries can convene going forward.

Next Steps

- The goal is to ensure that grand jury proceedings can resume in all counties.
- Although the first cases presented to the virtual grand jury panels were straightforward, the focus will be on prioritizing detained defendants to address the **2000+** defendants awaiting indictment.

Next Steps

Our experience during remote operations – including 50,000+ virtual events involving 500,000+ participants – demonstrates that virtual processes are successful.

Virtual grand juries are a **temporary** solution to an ongoing problem that will not last forever. We will return to in-person selections and proceedings when the COVID-19 health emergency concludes.

Next Steps

The virtual grand jury pilot program will be most effective if all stakeholders work together.

Procedures will be refined based on input from judges, attorneys, jurors, and the public.

The New Jersey courts will continue to provide information about grand jury proceedings and all current and upcoming court operations, including on our public webpage, njcourts.gov.