

STATE OF COLORADO
7TH JUDICIAL DISTRICT
DELTA, GUNNISON, HINSDALE, MONTROSE, OURAY & SAN MIGUEL COUNTIES

ADMINISTRATIVE ORDER 23-01 EXEMPTING GRAND JURY INDICTMENT RETURN HEARINGS FROM LIVE STREAMING

Pursuant to the authority granted to chief judges of the judicial districts of the State of Colorado by Chief Justice Directive 95-01 and pursuant to the discretion granted to judicial officers in Chief Justice Directive ("GD") 23-02 Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts, the undersigned, in his capacity as Chief Judge of the Seventh Judicial District, enters the following Administrative Order 23-01 Exempting Grand Jury Indictment Return Hearings from Live Streaming.

On April 12, 2023, the Chief Justice of the Colorado Supreme Court entered GD 23-02 Live Streaming Coverage of Criminal Court Proceedings in the Trial Courts. Pursuant to GD 23-02, "[j]udicial officers shall have the discretion to expand or limit the live streaming of proceedings after consideration of the standards set forth in section IV(B)." CJD 23-02 § IV(A). The factors to be considered when determining whether to expand or limit live streaming include:

- i. Whether there is a reasonable likelihood that live streaming would interfere with the rights of the parties to a fair trial;
- ii. Whether there is a reasonable likelihood that live streaming would create any adverse consequence to a party, attorney, victim, or witness;
- iii. Whether there is a reasonable likelihood that live streaming would unduly detract from the solemnity, decorum, and dignity of the court;
- iv. Whether any prior violations of this directive or other rules of the court have occurred in the same matter;
- v. The level of public interest in the case;

- vi. Consideration of the Victim Rights Act, whereby a victim has the right to be present in person, by phone, virtually by audio or video, or similar technology for all critical stages of the criminal justice process; and
- vii. Consideration of the Americans with Disabilities Act, whereby deaf, hard of hearing, and deafblind individuals may request communication access services by completing the standard judicial ADA request form.

CJD 23-02 § IV(B).

While grand jury indictment returns are not included under the "Express Limitation on Live Streaming" provision in GD 23-02, the undersigned hereby excludes grand jury indictment return hearings from live streaming in the Seventh Judicial District.

"A grand jury is an investigatory body and therefore conducts its proceedings in secrecy." *People v. Thompson*, 181 P.3d 1143, 1147 (Colo. 2008). While grand jury proceedings are conducted in secrecy, indictment return hearings take place in open court before the criminal case is created. Pursuant to Crim. P. 6.6,

(a) Presentation of an indictment in open court by a grand jury may be accomplished by the foreman of the grand jury, the full grand jury, or by the prosecutor acting under instructions of the grand jury.

(b) Upon motion by the prosecutor, the court shall order the indictment to be sealed and no person may disclose the existence of the indictment until the defendant is in custody or has been admitted to bail, except when necessary for the issuance of a warrant or summons.

Crim. P. 6.6; see *also* C.R.S. § 13-74-107(2); C.R.S. § 13-72-108. During the indictment return hearing, the Court usually sets bond, issues the arrest warrant, and rules on any motion to seal indictment. And while the prosecutor typically tenders the indictment in this District, there is a provision in Crim. P. 6.6(a) where the full grand jury or the foreman of the grand jury could return the indictment in open court.¹ Simply put, the Court does not control who will be returning the indictment in open court.

¹ Grand juror confidentiality is essential to the grand jury process, and grand juror confidentiality does not end when an indictment is returned.

Thus, after considering the factors in GD 23-02 § IV(B) when applied to grand jury indictment return hearings, the undersigned finds that there is a reasonable likelihood that live streaming would interfere with the rights of the parties to a fair trial; a reasonable likelihood that live streaming would create an adverse consequence to a party, attorney, victim, or witness; and a reasonable likelihood that live streaming would unduly detract from the solemnity, decorum, and dignity of the court. In support thereof, if an indictment return hearing were to be live streamed, there is a reasonable likelihood of severe adverse consequences, including: the potential for an indicted defendant to be alerted as to the existence of the indictment before the arrest warrant is entered into the system, the potential for an indictment to be made public before the judge is presented with the motion to seal, and the potential to identify any grand jurors. The Court cannot say whether any prior violation has occurred in the same matter, as the Court has never allowed live streaming of an indictment return. Further, there should not be any public interest in the case as the case does not exist until after the indictment return is processed and entered by the Clerk's Office. The Court has additionally considered the Victim Rights Act and the Americans with Disabilities Act and does not believe that rights afforded under those acts will be substantially impacted by this GO 23-06.

For all the reasons listed above, the undersigned excludes grand jury indictment return hearings from live streaming in the Seventh Judicial District.

Dated: May 9, 2023.

BY THE COURT:



J. Steven Patrick
Chief Judge

XC: 7th JD Judges
7th JD Jury Commissioner
Office of the Public Defender, 7th Judicial District
7th Judicial District, District Attorney