

GRAND JURY AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill amends provisions related to grand juries.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ when a county or district attorney fails to file criminal charges in a case where a law enforcement officer uses deadly force, requires the county or district attorney to release all facts and legal standards that were used to reach the decision to not file criminal charges;
- ▶ provides that good cause exists to summon a grand jury if the matter concerns alleged public corruption or the alleged use of deadly force by a law enforcement officer;
- ▶ clarifies that the managing judge may be present while a grand jury is in session;
- ▶ amends provisions related to the disclosure of grand jury proceedings;
- ▶ requires the managing judge to order a transcript of the grand jury proceedings be prepared and classified as a public record if the matter concerns the alleged use of deadly force by a law enforcement officer and the grand jury declines to indict the law enforcement officer;
- ▶ requires the prosecuting attorney to provide a transcript to the defendant if a grand jury indicts the defendant;



28 ▶ prohibits the disclosure of grand jury deliberations, the vote of a grand juror, the
29 identity of a grand juror, and, in certain circumstances, the identity of a witness who
30 appeared before the grand jury;

31 ▶ requires a county or municipality to pay the expenses of a grand jury when a grand
32 jury is summoned at the request of a county attorney, district attorney, or municipal
33 attorney; and

34 ▶ makes technical and conforming changes.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **76-2-408**, as last amended by Laws of Utah 2019, Chapter 395

42 **77-10a-1**, as enacted by Laws of Utah 1990, Chapter 318

43 **77-10a-2**, as last amended by Laws of Utah 2018, Chapter 25

44 **77-10a-13**, as last amended by Laws of Utah 2018, Chapter 281

45 **77-10a-20**, as last amended by Laws of Utah 1997, Chapter 372

46 ENACTS:

47 **77-10a-13.5**, Utah Code Annotated 1953



49 *Be it enacted by the Legislature of the state of Utah:*

50 Section 1. Section **76-2-408** is amended to read:

51 **76-2-408. Peace officer use of force -- Investigations.**

52 (1) As used in this section:

53 (a) "Dangerous weapon" means a firearm or an object that in the manner of [its] the
54 object's use or intended use is capable of causing death or serious bodily injury to a person.

55 (b) "Deadly force" means a force that creates or is likely to create, or that the person
56 using the force intends to create, a substantial likelihood of death or serious bodily injury to a
57 person.

58 (c) "In custody" means in the legal custody of a state prison, county jail, or other

59 correctional facility, including custody that results from:

- 60 (i) a detention to secure attendance as a witness in a criminal case;
- 61 (ii) an arrest for or charging with a crime and committing for trial;
- 62 (iii) committing for contempt, upon civil process, or by other authority of law; or
- 63 (iv) sentencing to imprisonment on conviction of a crime.

64 (d) "Investigating agency" means a law enforcement agency, the county or district
65 attorney's office, or an interagency task force composed of officers from multiple law
66 enforcement agencies.

67 (e) "Officer" means the same as the term "law enforcement officer" as that term is
68 defined in Section [53-13-103](#).

69 (f) "Officer-involved critical incident" means any of the following:

- 70 (i) an officer's use of deadly force;
- 71 (ii) an officer's use of a dangerous weapon against a person that causes injury to any
72 person;
- 73 (iii) death or serious bodily injury to any person, other than the officer, resulting from
74 an officer's:
 - 75 (A) use of a motor vehicle while the officer is on duty; or
 - 76 (B) use of a government vehicle while the officer is off duty;
- 77 (iv) the death of a person who is in custody, but excluding a death that is the result of
78 disease, natural causes, or conditions that have been medically diagnosed prior to the person's
79 death; or
- 80 (v) the death of or serious bodily injury to a person not in custody, other than an
81 officer, resulting from an officer's attempt to prevent a person's escape from custody, to make
82 an arrest, or otherwise to gain physical control of a person.

83 (g) "Serious bodily injury" means the same as that term is defined in Section [76-1-601](#).

84 (2) When an officer-involved critical incident occurs:

- 85 (a) upon receiving notice of the officer-involved critical incident, the law enforcement
86 agency having jurisdiction where the incident occurred shall, as soon as practical, notify the
87 county or district attorney having jurisdiction where the incident occurred; and
- 88 (b) the chief executive of the law enforcement agency and the county or district
89 attorney having jurisdiction where the incident occurred shall:

90 (i) jointly designate an investigating agency for the officer-involved critical incident;
91 [and]

92 (ii) designate which agency is the lead investigative agency if the officer-involved
93 critical incident involves multiple investigations[-]; and

94 (iii) if the county or district attorney declines to file criminal charges in a case where an
95 officer uses deadly force, release to the public all facts and legal standards that were used to
96 reach the decision to not file criminal charges.

97 (3) The investigating agency under Subsection (2) may not be the law enforcement
98 agency employing the officer who is alleged to have caused or contributed to the
99 officer-involved critical incident.

100 (4) This section does not preclude the law enforcement agency employing an officer
101 alleged to have caused or contributed to the officer-involved critical incident from conducting
102 an internal administrative investigation.

103 (5) Each law enforcement agency that is part of or administered by the state or any of
104 its political subdivisions shall, by December 31, 2015, adopt and post on its publicly accessible
105 website:

106 (a) the policies and procedures the agency has adopted to select the investigating
107 agency if an officer-involved critical incident occurs in its jurisdiction and one of its officers is
108 alleged to have caused or contributed to the officer-involved incident; and

109 (b) the protocols the agency has adopted to ensure that any investigation of
110 officer-involved incidents occurring in its jurisdiction are conducted professionally,
111 thoroughly, and impartially.

112 Section 2. Section **77-10a-1** is amended to read:

113 **77-10a-1. Definitions.**

114 As used in this chapter:

115 (1) "Clerk of the court" means:

116 (a) the state court administrator; or [his]

117 (b) the state court administrator's designee.

118 (2) "Deadly force" means the same as that term is defined in Section 76-2-408.

119 (3) "Law enforcement officer" means the same as that term is defined in Section
120 53-10-103.

121 [(2)] (4) "Managing judge" means the supervising judge when [he] the supervising
 122 judge retains authority to manage a grand jury, or the district court judge to whom the
 123 supervising judge delegates management of a grand jury.

124 [(3)] (5) "Presiding officer" means the presiding officer of the Judicial Council.

125 [(4)] (6) "Subject" means a person whose conduct is within the scope of the grand
 126 jury's investigation, and that conduct exposes the person to possible criminal prosecution.

127 [(5)] (7) "Supervising judge" means the district court judge appointed by the presiding
 128 officer to supervise the five-judge grand jury panel.

129 [(6)] (8) "Target" means a person regarding whom the attorney for the state, the special
 130 prosecutor, or the grand jury has substantial evidence that links that person to the commission
 131 of a crime and who could be indicted or charged with that crime.

132 [(7)] (9) "Witness" means a person who appears before the grand jury either voluntarily
 133 or pursuant to subpoena for the purpose of providing testimony or evidence for the grand jury's
 134 use in discharging [its] the grand jury's responsibilities.

135 Section 3. Section **77-10a-2** is amended to read:

136 **77-10a-2. Panel of judges -- Appointment -- Membership -- Ordering of grand**
 137 **jury.**

138 (1) (a) The presiding officer [~~of the Judicial Council~~] shall appoint a panel of five
 139 judges from the district courts of the state to hear in secret all persons claiming to have
 140 information that would justify the calling of a grand jury.

141 (b) The presiding officer may appoint senior status district court judges to the panel.

142 (c) The presiding officer shall designate one member of the panel as supervising judge
 143 to serve at the pleasure of the presiding officer.

144 (d) The panel has the authority of the district court.

145 [(b)] (2) (a) To ensure geographical diversity on the panel:

146 (i) one judge shall be appointed from the first or second district for a five-year term[;];

147 (ii) one judge shall be appointed from the third district for a four-year term[;];

148 (iii) one judge shall be appointed from the fourth district for a three-year term[;];

149 (iv) one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a
 150 two-year term[;]; and

151 (v) one judge shall be appointed from the third district for a one-year term.

- 152 **(b)** Following the first term, all terms on the panel are for five years.
- 153 ~~[(c)]~~ **(3) (a)** The panel shall schedule hearings in each judicial district at least once
154 every three years and may meet at any location within the state.
- 155 **(b)** Three members of the panel constitute a quorum for the transaction of panel
156 business.
- 157 **(c)** The panel shall act by the concurrence of a majority of members present and may
158 act through the supervising judge or managing judge.
- 159 **(d)** The schedule for the hearings shall be set by the panel and published by the
160 Administrative Office of the Courts. ~~[Persons who desire to appear before the panel]~~
- 161 **(e)** ~~If a person desires to appear before the panel, the person~~ shall schedule an
162 appointment with the Administrative Office of the Courts at least 10 days in advance.
- 163 **(f)** If no appointments are scheduled, the hearing may be canceled. ~~[Persons appearing~~
164 ~~before the panel]~~
- 165 **(g)** ~~If a person appears before the panel, the person~~ shall be placed under oath and
166 examined by the judges conducting the hearings.
- 167 **(h)** Hearsay evidence may be presented at the hearings only under the same provisions
168 and limitations that apply to preliminary hearings.
- 169 ~~[(2)]~~ **(4) (a)** If the panel finds good cause to believe a grand jury is necessary, the panel
170 shall make ~~[its]~~ the panel's findings in writing and may order a grand jury to be summoned.
- 171 **(b)** The panel may refer a matter to the attorney general, county attorney, district
172 attorney, or city attorney for investigation and prosecution.
- 173 **(c)** The referral under Subsection (4)(b) shall contain as much of the information
174 presented to the panel as the panel determines relevant.
- 175 **(d)** The attorney general, county attorney, district attorney, or city attorney shall report
176 to the panel the results of any investigation and whether the matter will be prosecuted by a
177 prosecutor's information.
- 178 **(e)** The report shall be filed with the panel within 120 days after the referral unless the
179 panel provides for a different amount of time.
- 180 **(f)** If the panel is not satisfied with the action of the attorney general, county attorney,
181 district attorney, or city attorney, the panel may order a grand jury to be summoned.
- 182 ~~[(3) When]~~ **(5) (a)** If the attorney general, a county attorney, a district attorney, a

183 municipal attorney, or a special prosecutor appointed under Section ~~77-10a-12~~ [~~certifies in~~
184 ~~writing to the supervising judge that in his judgment~~] determines that a grand jury is necessary
185 because of criminal activity in the state, the attorney general, county attorney, district attorney,
186 municipal attorney, or special prosecutor shall certify the necessity for a grand jury, in writing,
187 to the supervising judge.

188 (b) If the panel finds that good cause exists for a matter certified under Subsection
189 (5)(a), the panel shall order a grand jury to be summoned [if the panel finds good cause exists].

190 (c) (i) The panel shall find good cause exists when the matter certified under
191 Subsection (5)(a) concerns:

192 (A) alleged public corruption involving an offense under Title 76, Chapter 8, Part 1,
193 Corrupt Practices, or Part 2, Abuse of Office; or

194 (B) the alleged use of deadly force by a law enforcement officer.

195 (ii) For all other matters certified to the panel under Subsection (5)(a), the panel shall
196 determine whether good cause exists in accordance with Subsection (6).

197 ~~[(4)]~~ (6) In determining whether good cause exists under Subsection ~~[(3)]~~ (4) or (5), the
198 panel shall consider, among other factors, whether a grand jury is needed to help maintain
199 public confidence in the impartiality of the criminal justice process.

200 ~~[(5)]~~ (7) A written certification under Subsection ~~[(3)]~~ (5)(a) shall contain a statement
201 that in the prosecutor's ~~[judgement]~~ judgment a grand jury is necessary, but the certification
202 need not contain any information ~~[which]~~ that if disclosed may create a risk of:

203 (a) destruction or tainting of evidence;

204 (b) flight or other conduct by the subject of the investigation to avoid prosecution;

205 (c) damage to a person's reputation or privacy;

206 (d) harm to any person; or

207 (e) a serious impediment to the investigation.

208 ~~[(6)]~~ (8) A written certification under Subsection ~~[(3)]~~ (5)(a) shall be accompanied by a
209 statement of facts in support of the need for a grand jury.

210 ~~[(7)]~~ (9) The supervising judge shall seal any written statement of facts submitted
211 under Subsection ~~[(6)]~~ (8).

212 ~~[(8) The]~~ (10) At the time a grand jury is summoned, the supervising judge may [at the
213 time the grand jury is summoned]:

214 (a) order that ~~[it]~~ the grand jury be drawn from the state at large as provided in this
 215 chapter or from any district within the state; and

216 (b) retain authority to supervise the grand jury or delegate the supervision of the grand
 217 jury to any judge of any district court within the state.

218 ~~[(9)]~~ (11) If after the certification under Subsection ~~[(3)]~~ (5)(a) the panel does not order
 219 the summoning of a grand jury or the grand jury does not return an indictment regarding the
 220 subject matter of the certification, the prosecuting attorney may release to the public a copy of
 221 the written certification if in the prosecutor's judgment the release does not create a risk as
 222 described in Subsection ~~[(5)]~~ (7).

223 Section 4. Section 77-10a-13 is amended to read:

224 **77-10a-13. Location -- Who may be present -- Witnesses -- Witnesses who are**
 225 **subjects -- Evidence -- Contempt -- Notice.**

226 (1) (a) The managing judge shall designate the place where the grand jury meets.

227 (b) The grand jury may, upon request and with the permission of the managing judge,
 228 meet and conduct business any place within the state.

229 (c) Subject to the approval of the managing judge, the grand jury shall determine the
 230 times at which ~~[it]~~ the grand jury meets.

231 (2) (a) ~~[Attorneys representing the state, special prosecutors appointed under Section~~
 232 ~~77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and~~
 233 ~~a court reporter or operator of a recording device to record the proceedings may be present~~
 234 ~~while the grand jury is in session.]~~ The following persons may be present while a grand jury is
 235 in session:

236 (i) the managing judge;

237 (ii) any attorney representing the state;

238 (iii) a special prosecutor appointed under Section 77-10a-12;

239 (iv) the witness under examination;

240 (v) if needed, an interpreter;

241 (vi) counsel for the witness;

242 (vii) a court reporter; or

243 (viii) an operator of a recording device to record the proceedings.

244 (b) No person other than the jurors may be present while the grand jury is deliberating.

245 (3) (a) ~~[The attorneys]~~ An attorney representing the state and ~~[the]~~ a special
 246 ~~[prosecutors]~~ prosecutor may:

247 (i) subpoena witnesses to appear before the grand jury; and ~~[may]~~

248 (ii) subpoena evidence in the name of the grand jury without the prior approval or
 249 consent of the grand jury or the court. ~~[The jury]~~

250 (b) A grand jury may request that other witnesses or evidence be subpoenaed.

251 ~~[(b) Subpoenas]~~ (c) A subpoena may be issued in the name of the grand jury to any
 252 person located within the state and for any evidence located within the state or as otherwise
 253 provided by law.

254 ~~[(e)]~~ (4) (a) Except as provided in Subsection ~~[(3)(d)]~~ (4)(b), a subpoena requiring a
 255 minor, who is a victim of a crime, to testify before a grand jury may not be served less than 72
 256 hours before the ~~[victim]~~ minor is required to testify.

257 ~~[(d)]~~ (b) A subpoena may be served upon a minor less than 72 hours before the minor
 258 is required to testify if the managing judge makes a factual finding that the minor was
 259 intentionally concealed to prevent service or that a shorter period is reasonably necessary to
 260 prevent:

261 (i) a risk to the minor's safety;

262 (ii) the concealment or removal of the minor from the jurisdiction;

263 (iii) intimidation or coercion of the minor or a family member of the minor; or

264 (iv) undue influence on the minor regarding the minor's testimony.

265 ~~[(e)]~~ (c) The service requirement in Subsection ~~[(3)(e)]~~ (4)(a) may be asserted only by
 266 or on behalf of the minor and is not a basis for invalidation of the minor's testimony or any
 267 indictment issued by the grand jury.

268 ~~[(f)]~~ (d) The service requirement of Subsection ~~[(3)(d)]~~ (4)(b) may be asserted by a
 269 parent or legal guardian of the minor on the minor's behalf.

270 ~~[(g)]~~ (5) If the managing judge finds it necessary to prevent any of the actions
 271 enumerated in ~~[Subsections (3)(d)(i) through (iv)]~~ Subsection (4)(b), or to otherwise protect the
 272 minor, the judge may appoint a guardian ad litem to receive service on behalf of the minor, to
 273 represent the minor, and to protect the interests of the minor.

274 ~~[(h)]~~ (6) If the minor served under Subsection ~~[(3)(d)]~~ (4)(b) has no parent, legal
 275 guardian, or guardian ad litem with whom to confer prior to the grand jury hearing, the

276 managing judge shall appoint legal counsel to represent the minor at the hearing.

277 [(†)] (7) (a) For any minor served with a subpoena under this section, [attorneys] an
278 attorney representing the state, or a special [~~prosecutors~~] prosecutor appointed under Section
279 77-10a-12, shall interview and prepare the minor in the presence of the minor's parent or legal
280 guardian and [~~their~~] the minor's attorney, or a guardian ad litem at least 24 hours prior to the
281 time the minor is required to testify.

282 (b) The provisions of [~~this subsection~~] Subsection (7)(a) requiring the presence of the
283 minor's parent or legal guardian do not apply if:

- 284 (i) the parent or legal guardian is the subject of the grand jury investigation; or
285 (ii) the parent or legal guardian is engaged in frustrating, or conspires with another to
286 frustrate, the protections and purposes of Subsection [(3)(d)] (4)(b).

287 [(†)] (8) The managing judge may enter any order necessary to secure compliance with
288 any subpoena issued in the name of the grand jury.

289 [(4)] (9) (a) Any witness who appears before the grand jury shall be advised, by the
290 attorney for the state or the special prosecutor, of [~~his~~] the witness's right to be represented by
291 counsel.

292 (b) A witness who is [~~also a subject as defined in Section 77-10a-1~~] a subject shall, at
293 the time of appearance as a witness, be advised:

- 294 (i) of [~~his~~] the witness's right to be represented by counsel;
295 (ii) that [~~he~~] the witness is a subject;
296 (iii) that [~~he~~] the witness may claim [~~his~~] the witness's privilege against
297 self-incrimination; and
298 (iv) of the general scope of the grand jury's investigation.

299 (c) A witness who is [~~also a target as defined in Section 77-10a-1~~] a target shall, at the
300 time of appearance as a witness, be advised:

- 301 (i) of [~~his~~] the witness's right to be represented by counsel;
302 (ii) that [~~he~~] the witness is a target;
303 (iii) that [~~he~~] the witness may claim [~~his~~] the witness's privilege against
304 self-incrimination;
305 (iv) that the attorney for the state, the special prosecutor, or the grand jury is in

306 possession of substantial evidence linking [~~him~~] the witness to the commission of a crime for

307 which ~~[he]~~ the witness could be charged; and

308 (v) of the general nature of that charge and of the evidence that would support the
309 charge.

310 (d) This Subsection [~~(4)~~] (9) does not require the attorney for the state, the special
311 prosecutor, or the grand jury to disclose to any subject or target the names or identities of
312 witnesses, sources of information, or informants, or disclose information in detail or in a
313 fashion that would jeopardize or compromise any ongoing criminal investigation or endanger
314 any person or the community.

315 [~~(5)~~] (10) (a) The grand jury shall receive evidence without regard for the formal rules
316 of evidence, except the grand jury may receive hearsay evidence only under the same
317 provisions and limitations that apply to preliminary hearings.

318 (b) (i) Any person, including a witness who has previously testified or produced books,
319 records, documents, or other evidence, may present exculpatory evidence to the attorney
320 representing the state or the special prosecutor and request that ~~[it]~~ the evidence be presented to
321 the grand jury, or request to appear personally before the grand jury to testify or present
322 evidence to that body.

323 (ii) The attorney for the state or the special prosecutor shall forward ~~[the request]~~ a
324 request under Subsection (10)(b)(i) to the grand jury.

325 (c) When the attorney for the state or the special prosecutor is personally aware of
326 substantial and competent evidence negating the guilt of a subject or target that might
327 reasonably be expected to lead the grand jury not to indict, the attorney or special prosecutor
328 shall present or otherwise disclose the evidence to the grand jury before the grand jury is asked
329 to indict that person.

330 [~~(6)~~] (11) (a) The managing judge has the contempt power and authority inherent in the
331 court over which the managing judge presides and as provided ~~[by statute]~~ in Title 78B,
332 Chapter 6, Part 3, Contempt.

333 (b) When a witness in any proceeding before or ancillary to any grand jury appearance
334 refuses to comply with an order from the managing judge to testify or provide other
335 information, including any book, paper, document, record, recording, or other material without
336 having a recognized privilege, the attorney for the state or special prosecutor may apply to the
337 managing judge for an order directing the witness to show cause why the witness should not be

338 held in contempt.

339 (c) After submission of the application and a hearing at which the witness is entitled to
340 be represented by counsel, the managing judge may hold the witness in contempt and order that
341 the witness be confined, upon a finding that the refusal was not privileged.

342 (d) A hearing may not be held under this part unless 72 hours' notice is given to the
343 witness who has refused to comply with the order to testify or provide other information,
344 except a witness may be given a shorter notice if the managing judge upon a showing of special
345 need so orders.

346 (e) Any confinement for refusal to comply with an order to testify or produce other
347 information shall continue until the witness is willing to give the testimony or provide the
348 information.

349 (f) A period of confinement may not exceed:

350 (i) the term of the grand jury, including extensions, before which the refusal to comply
351 with the order occurred~~[- In any event the confinement may not exceed one year.]; and~~

352 (ii) one year.

353 ~~[(f)]~~ (g) A person confined under this Subsection ~~[(6)]~~ (11) for refusal to testify or
354 provide other information concerning any transaction, set of transactions, event, or events may
355 not be again confined under this Subsection ~~[(6)]~~ (11) or for criminal contempt for a
356 subsequent refusal to testify or provide other information concerning the same transaction, set
357 of transactions, event, or events.

358 ~~[(g)]~~ (h) Any person confined under this section may be admitted to bail or released in
359 accordance with local procedures pending the determination of an appeal taken by the person
360 from the order of the person's confinement unless the appeal affirmatively appears to be
361 frivolous or taken for delay.

362 (i) Any appeal from an order of confinement under this section shall be disposed of as
363 soon as practicable, ~~[pursuant to]~~ in accordance with an expedited schedule and in no event
364 more than 30 days from the filing of the appeal.

365 ~~[(7)]~~ (a) ~~All proceedings, except when the grand jury is deliberating or voting, shall be~~
366 ~~recorded stenographically or by an electronic recording device. An unintentional failure of any~~
367 ~~recording to reproduce all or any portion of a proceeding does not affect the validity of any~~
368 ~~prosecution or indictment. The recording or reporter's notes or any transcript prepared from~~

369 ~~them shall remain in the custody or control of the attorney for the state or the special prosecutor~~
370 ~~unless otherwise ordered by the managing judge in a particular case.]~~

371 ~~[(b) A grand juror, an interpreter, a court reporter, an operator of a recording device, a~~
372 ~~typist who transcribes recorded testimony, an attorney for the state or special prosecutor, or any~~
373 ~~person to whom disclosure is made under the provisions of this section may not disclose~~
374 ~~matters occurring before the grand jury except as otherwise provided in this section. A~~
375 ~~knowing violation of this provision may be punished as a contempt of court.]~~

376 ~~[(c) Disclosure otherwise prohibited by this section of matters occurring before the~~
377 ~~grand jury, other than its deliberations and the vote of any grand juror, may be made to:]~~

378 ~~[(i) an attorney for the state or a special prosecutor for use in the performance of that~~
379 ~~attorney's duty; and]~~

380 ~~[(ii) government personnel, including those of state, local, and federal entities and~~
381 ~~agencies, as are considered necessary by the attorney for the state or special prosecutor to assist~~
382 ~~the attorney in the performance of the attorney's duty to enforce the state's criminal laws.]~~

383 ~~[(d) Any person to whom matters are disclosed under this section may not utilize that~~
384 ~~grand jury material for any purpose other than assisting the attorney for the state or the special~~
385 ~~prosecutor in performance of that attorney's duty to enforce the state's criminal laws. An~~
386 ~~attorney for the state or the special prosecutor shall promptly provide the managing judge with~~
387 ~~the names of the persons to whom the disclosure has been made and shall certify that the~~
388 ~~attorney has advised the person of the person's obligation of secrecy under this section.]~~

389 ~~[(e) Disclosure otherwise prohibited by this section of matters occurring before the~~
390 ~~grand jury may also be made when:]~~

391 ~~[(i) directed by the managing judge or by any court before which the indictment that~~
392 ~~involves matters occurring before the grand jury that are subject to disclosure is to be tried;~~
393 ~~preliminary to or in connection with a judicial proceeding;]~~

394 ~~[(ii) permitted by the managing judge at the request of the defendant, upon a showing~~
395 ~~that grounds may exist for a motion to dismiss the indictment because of matters occurring~~
396 ~~before the grand jury;]~~

397 ~~[(iii) the disclosure is made by an attorney for the state or the special prosecutor to~~
398 ~~another state or local grand jury or a federal grand jury;]~~

399 ~~[(iv) permitted by the managing judge at the request of an attorney for the state or the~~

400 special prosecutor, upon a showing that the matters may disclose a violation of federal criminal
401 law, to an appropriate official of the federal government for the purpose of enforcing federal
402 law; or]

403 [~~(v) showing of special need is made and the managing judge is satisfied that~~
404 ~~disclosure of the information or matters is essential for the preparation of a defense.~~]

405 [~~(f) When the matters are transcripts of testimony given by witnesses the state or~~
406 ~~special prosecutor intends to call in the state's case in chief in any trial upon an indictment~~
407 ~~returned by the grand jury before which the witnesses testified, the attorney for the state or the~~
408 ~~special prosecutor shall, no later than 30 days before trial, provide the defendant with access to~~
409 ~~the transcripts. The attorney for the state or the special prosecutor shall at the same time~~
410 ~~provide the defendant with access to all exculpatory evidence presented to the grand jury prior~~
411 ~~to indictment.~~]

412 [~~(g) When the managing judge orders disclosure of matters occurring before the grand~~
413 ~~jury, disclosure shall be made in a manner, at a time, and under conditions the managing judge~~
414 ~~directs.~~]

415 [~~(h) A petition for disclosure made under Subsection (7)(c)(ii) shall be filed with the~~
416 ~~managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon~~
417 ~~the attorney for the state or the special prosecutor, the parties to the judicial proceeding if~~
418 ~~disclosure is sought in connection with the proceeding, and other persons as the managing~~
419 ~~judge directs. The managing judge shall afford those persons a reasonable opportunity to~~
420 ~~appear and be heard.~~]

421 [~~(8) Records, orders, and subpoenas relating to grand jury proceedings shall be kept~~
422 ~~under seal to the extent and so long as necessary to prevent disclosure of matters occurring~~
423 ~~before the grand jury other than as provided in this section.~~]

424 [~~(9) Subject to any right to an open hearing in contempt proceedings, the managing~~
425 ~~judge shall order a hearing on matters affecting a grand jury proceeding to be closed to the~~
426 ~~extent necessary to prevent disclosure of matters occurring before a grand jury.~~]

427 Section 5. Section **77-10a-13.5** is enacted to read:

428 **77-10a-13.5. Disclosure of grand jury proceedings.**

429 **(1) (a) All grand jury proceedings shall be recorded stenographically or by an**
430 **electronic recording device, except when a grand jury is deliberating or voting.**

431 (b) An unintentional failure of any recording to reproduce all or any portion of a grand
432 jury proceeding does not affect the validity of any prosecution or indictment.

433 (c) A recording or reporter's notes, or any transcript prepared from the recording or
434 reporter's notes, of any grand jury proceeding shall remain in the custody or control of the
435 attorney representing the state or the special prosecutor, except as:

436 (i) ordered by the managing judge in a particular case; or

437 (ii) provided in Subsection (2).

438 (2) If a grand jury declines to indict a law enforcement officer for the alleged use of
439 deadly force, the managing judge shall order:

440 (a) except as provided in Subsection (8)(b), a transcript of the grand jury proceedings
441 to be prepared; and

442 (b) the transcript under Subsection (2)(a) be classified as a public record.

443 (3) (a) Except as otherwise provided by this section, a grand juror, an interpreter, a
444 court reporter, an operator of a recording device, a typist who transcribes recorded testimony,
445 an attorney representing the state or a special prosecutor, or any person to whom disclosure is
446 made under the provisions of this section, may not disclose matters occurring before the grand
447 jury.

448 (b) A knowing violation of Subsection (3)(a) may be punished as a contempt of court.

449 (4) Except as provided in Subsection (8)(b), grand jury proceedings may be disclosed:

450 (a) to an attorney for the state or a special prosecutor for use in the performance of that
451 attorney's duty;

452 (b) to government personnel, including state, local, and federal entities and agencies, as
453 are considered necessary by the attorney for the state or special prosecutor to assist the attorney
454 in the performance of the attorney's duty to enforce the state's criminal laws;

455 (c) when directed by the managing judge, or by any court before which the indictment
456 that involves matters occurring before the grand jury that are subject to disclosure is to be tried,
457 preliminary to or in connection with a judicial proceeding;

458 (d) when permitted by the managing judge at the request of the defendant, upon a
459 showing that grounds may exist for a motion to dismiss the indictment because of matters
460 occurring before the grand jury;

461 (e) when the disclosure is made by an attorney representing the state, or the special

462 prosecutor, to another state or local grand jury or a federal grand jury;

463 (f) when permitted by the managing judge at the request of an attorney representing the
464 state, or the special prosecutor, upon a showing that the matters may disclose a violation of
465 federal criminal law, to an appropriate official of the federal government for the purpose of
466 enforcing federal law;

467 (g) when a showing of a special need is made and the managing judge is satisfied that
468 disclosure of the information or matters is essential for the preparation of a defense;

469 (h) when the disclosure is made by an attorney representing the state, or the special
470 prosecutor, to a defendant under Subsection (6); and

471 (i) to the public in accordance with Subsection (2).

472 (5) (a) If grand jury proceedings are disclosed to a person under Subsection (4)(a) or
473 (b), the person may not utilize that grand jury material for any purpose other than assisting the
474 attorney for the state or the special prosecutor in performance of that attorney's duty to enforce
475 the state's criminal laws.

476 (b) An attorney representing the state, or the special prosecutor, shall:

477 (i) promptly provide the managing judge with the names of the persons to whom the
478 disclosure has been made under Subsection (4)(a) or (b); and

479 (ii) certify that the attorney has advised the person of the person's obligation of secrecy
480 under this section.

481 (6) (a) Except as provided in Subsection (8)(b), if a grand jury indicts a defendant, the
482 attorney representing the state, or the special prosecutor, shall no later than 30 days before trial:

483 (i) disclose the grand jury proceedings to the defendant; and

484 (ii) provide a transcript of the grand jury proceedings to the defendant.

485 (b) A disclosure under Subsection (6)(a) shall include all exculpatory evidence
486 presented to the grand jury before indictment.

487 (7) (a) A petition for disclosure made under Subsection (4)(d) shall be filed with the
488 managing judge.

489 (b) Unless the hearing is ex parte, the petitioner shall serve written notice upon the
490 attorney representing the state, or the special prosecutor, the parties to the judicial proceeding if
491 disclosure is sought in connection with the proceeding, and other persons as the managing
492 judge directs.

493 (c) The managing judge shall afford persons under Subsection (7)(b) a reasonable
494 opportunity to appear and be heard.

495 (8) (a) Except as provided in Subsection (2), if the managing judge orders the
496 disclosure of grand jury proceedings, the disclosure shall be made in a manner, at a time, and
497 under conditions that the managing judge directs.

498 (b) A disclosure of grand jury proceedings may not include any record or information
499 regarding:

500 (i) the grand jury's deliberations;

501 (ii) the vote of a grand juror;

502 (iii) the identity of a grand juror; or

503 (iv) the identity of a witness who appeared before a grand jury if:

504 (A) the disclosure is being made to the public under Subsection (2); and

505 (B) the witness submits a written request to the managing judge stating that the witness
506 wishes the witness's identity to remain confidential.

507 (9) Except otherwise provided by this section, any record, order, or subpoena relating
508 to grand jury proceedings shall be kept under seal to the extent and so long as necessary to
509 prevent disclosure of matters occurring before the grand jury.

510 (10) Subject to any right to an open hearing in contempt proceedings, the managing
511 judge shall order a hearing on matters affecting a grand jury proceeding to be closed to the
512 extent necessary to prevent disclosure of matters occurring before a grand jury.

513 Section 6. Section **77-10a-20** is amended to read:

514 **77-10a-20. Expenses of grand jury -- Appropriation -- Payment by state or**
515 **county.**

516 (1) (a) The expenses of operation of a grand jury summoned under this chapter shall be
517 paid by the Judicial Council, except under Subsection (2).

518 (b) Expenses include grand juror fees, rental of a facility, cost of transcripts, payment
519 for a court reporter or electronic recording device, secretarial services, and investigation and
520 recorder staff.

521 (c) For this purpose, an appropriation of \$25,000 is made from the General Fund to the
522 Judicial Council as a separate line item in the budget of the Judicial Council.

523 (d) Any amount of this appropriation remaining at the end of the fiscal year lapses into

524 the General Fund.

525 (2) (a) When a grand jury is summoned to investigate an allegation that is determined
526 to be primarily a county-related issue, the expenses of the grand jury shall be paid by the
527 county or counties involved.

528 (b) When a grand jury is summoned upon the request of a county attorney, a district
529 attorney, or a municipal attorney, the expenses of the grand jury shall be paid by the respective
530 county or municipality.

531 ~~[(b) The]~~ (3) For purposes of determining payment of expenses under this section, the
532 supervising judge shall determine, before the grand jury is called, whether:

533 (a) the request to summon a grand jury is from a county attorney, a district attorney, or
534 a municipal attorney; and

535 (b) [if] the allegations involve primarily the state [or], a county or counties [for
536 purposes of determining payment of expenses under this section], or a municipality.

537 ~~[(3)]~~ (4) The expenses of any grand jury and the compensation for any special
538 prosecutor appointed under this chapter shall be reviewed and approved or disapproved by the
539 clerk of the court under the direction of the managing judge.