

GRAND JURY PROCESS REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to grand juries.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ replaces a single panel of judges with the appointment of a panel of judges in each judicial district to consider requests for a grand jury within the district;
- ▶ outlines the duties of a managing judge;
- ▶ provides circumstances that qualify as good cause to summon a grand jury;
- ▶ addresses the requirement of a prosecutor to provide an indicted defendant with a transcript of testimony to the grand jury;
- ▶ requires a county or municipality to pay the expenses of a grand jury when one is summoned at the request of a county attorney, district attorney, or municipal attorney; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 [77-10a-1](#), as enacted by Laws of Utah 1990, Chapter 318

30 [77-10a-2](#), as last amended by Laws of Utah 2018, Chapter 25

31 [77-10a-10](#), as enacted by Laws of Utah 1990, Chapter 318

32 [77-10a-12](#), as last amended by Laws of Utah 2015, Chapter 258

33 [77-10a-13](#), as last amended by Laws of Utah 2018, Chapter 281

34 [77-10a-17](#), as enacted by Laws of Utah 1990, Chapter 318

35 [77-10a-20](#), as last amended by Laws of Utah 1997, Chapter 372

36

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

38 Section 1. Section [77-10a-1](#) is amended to read:

39 **77-10a-1. Definitions.**

40 As used in this chapter:

41 ~~[(1) "Clerk of the court" means the state court administrator or his designee.]~~

42 (1) "Appointed judge" means a district court judge appointed by the chief judge of the
 43 district to be on a three-judge panel that:

44 (a) evaluates a request to summon a grand jury; and

45 (b) summons a grand jury upon good cause.

46 (2) "Managing judge" means ~~[the supervising judge when he retains authority to~~
 47 ~~manage a grand jury, or]~~ the district court judge to whom the ~~[supervising]~~ chief judge of the
 48 district delegates management of a grand jury.

49 ~~[(3) "Presiding officer" means the presiding officer of the Judicial Council.]~~

50 (3) "Panel" means a three-judge panel appointed under Section [77-10a-2](#).

51 (4) "Subject" means a person whose conduct is within the scope of ~~[the grand jury's~~
 52 ~~investigation]~~ a request to summon a grand jury, and that conduct exposes the person to
 53 possible criminal prosecution.

54 (5) "Supervising judge" means the district court judge appointed by the ~~[presiding~~
 55 ~~officer]~~ chief judge of the district to supervise ~~[the five-judge]~~ a three-judge grand jury panel.

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

59 (7) "Witness" means a person who appears before the grand jury either voluntarily or
60 [~~pursuant to~~] in accordance with a subpoena for the purpose of providing testimony or evidence
61 for the grand jury's use in discharging [~~its~~] the grand jury's responsibilities.

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

63 **77-10a-2. Appointment of panel of judges -- Ordering of grand jury.**

64 (1) (a) The [~~presiding officer of the Judicial Council~~] chief judge of a judicial district
65 shall appoint a panel of [~~five~~] three judges from the district [~~courts of the state to hear in secret~~
66 ~~all persons~~] to hear an individual claiming to have information that would justify the [calling]
67 summoning of a grand jury. The [~~presiding officer~~] chief judge of a district may appoint a
68 senior status district court [~~judges~~] judge to the panel. The [~~presiding officer~~] chief judge of
69 the district shall designate one member of the panel as supervising judge to serve at the
70 pleasure of the [~~presiding officer~~] chief judge of the district. [~~The~~] A panel has the authority of
71 the district court.

72 [~~(b) To ensure geographical diversity on the panel one judge shall be appointed from~~
73 ~~the first or second district for a five-year term, one judge shall be appointed from the third~~
74 ~~district for a four-year term, one judge shall be appointed from the fourth district for a~~
75 ~~three-year term, one judge shall be appointed from the fifth, sixth, seventh, or eighth districts~~
76 ~~for a two-year term, and one judge shall be appointed from the third district for a one-year~~
77 ~~term. Following the first term, all terms on the panel are for five years.]~~

78 [~~(c) The panel shall schedule hearings in each judicial district at least once every three~~
79 ~~years and may meet at any location within the state. Three]~~

80 (b) (i) Two members of the panel constitute a quorum for the transaction of panel
81 business. [~~The panel shall act by the concurrence of a majority of members present and may~~
82 ~~act through the supervising judge or managing judge. The schedule for the hearings shall be~~
83 ~~set by the panel and published by the Administrative Office of the Courts. Persons who desire~~
84 ~~to appear before the panel shall schedule an appointment with the Administrative Office of the~~
85 ~~Courts at least 10 days in advance. If no appointments are scheduled, the hearing may be~~
86 ~~canceled. Persons appearing before the panel shall be placed under oath and examined by the~~
87 ~~judges conducting the hearings. Hearsay evidence may be presented at the hearings only under~~
88 ~~the same provisions and limitations that apply to preliminary hearings.]~~

89 (ii) A panel may act through the supervising judge and a panel shall act:

90 (A) by concurrence of a majority when three members are present; or

91 (B) by unanimity when two members are present.

92 (c) The chief judge of a district shall appoint a panel on an ad hoc basis to evaluate a
93 request for a grand jury.

94 (2) (a) An individual claiming to have information that would justify the summoning of
95 a grand jury shall certify a request in writing to the chief judge of the judicial district where the
96 criminal conduct is believed to have occurred.

97 (b) A written certification shall:

98 (i) contain a statement of facts in support of the need for a grand jury;

99 (ii) indicate whether the matter has been screened and declined by the attorney general,
100 county attorney, district attorney, or municipal attorney and, if so, include a copy of the
101 declination letter; and

102 (iii) include a confirmation that in the individual's judgment a grand jury is necessary.

103 (c) The chief judge shall promptly forward the written certification to the three-judge
104 panel that shall:

105 (i) schedule a closed hearing on the written certification to summon a grand jury; or

106 (ii) deny the granting of a hearing in writing, and provide a copy of the denial to the
107 individual who submitted the written certification, if the panel finds that:

108 (A) a panel has already ruled on a prior written certification based on the same subject
109 matter;

110 (B) the matter was screened and declined by the attorney general, county attorney,
111 district attorney, or municipal attorney and, based on information in the declination letter, the
112 matter was properly screened; or

113 (C) the written certification is frivolous or without merit on its face.

114 (d) (i) In a closed hearing, the panel shall place under oath an individual who will be
115 examined by the panel at the hearing.

116 (ii) A party may present hearsay evidence at the hearing only under the same provisions
117 and limitations that apply to a preliminary hearing.

118 (iii) For matters that were previously screened and declined by the attorney general,
119 county attorney, district attorney, or municipal attorney, the panel may summon the prosecuting
120 agency to the closed hearing to explain the screening process and reason for declination.

121 (3) The closed hearing shall be recorded and the record shall remain sealed unless and
122 until a grand jury is impaneled and returns an indictment on the matter.

123 (4) Within 30 days after the day on which the closed hearing is held, the panel shall
124 make one of the findings described in this Subsection (4) in writing.

125 ~~[(2)]~~ (a) If ~~[the]~~ a panel finds good cause to believe a grand jury is necessary, the panel
126 ~~[shall make its findings in writing and may]~~ shall order a grand jury to be summoned.

127 (b) (i) ~~[The]~~ A panel may refer a matter to the attorney general, county attorney, district
128 attorney, or ~~[city]~~ municipal attorney for investigation and prosecution unless the matter was
129 brought to the panel by the attorney general, county attorney, district attorney, or municipal
130 attorney. The referral shall contain as much of the information presented to the panel as the
131 panel determines relevant.

132 (ii) The attorney general, county attorney, district attorney, or ~~[city]~~ municipal attorney
133 shall report to the panel the results of any investigation and whether the matter will be
134 prosecuted by a prosecutor's information. The report shall be filed with the panel within 120
135 days after the referral unless the panel provides for a different amount of time. If the panel is
136 not satisfied with the action of the attorney general, county attorney, district attorney, or ~~[city]~~
137 municipal attorney, the panel may order a grand jury to be summoned.

138 (c) If a panel finds that there is not good cause to believe a grand jury is necessary, the
139 panel shall notify the individual who requested a grand jury and explain the factors considered
140 by the panel.

141 ~~[(3) When the attorney general, a county attorney, a district attorney, municipal~~
142 ~~attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the~~
143 ~~supervising judge that in his judgment a grand jury is necessary because of criminal activity in~~
144 ~~the state, the panel shall order a grand jury to be summoned if the panel finds good cause~~
145 ~~exists.]~~

146 ~~[(4)]~~ (5) In determining whether good cause exists under Subsection ~~[(3)]~~ (4)(a), ~~[the]~~ a
147 panel shall consider, among other factors, whether a grand jury is needed to help maintain
148 public confidence in the impartiality of the criminal justice process.

149 (6) Notwithstanding Subsection (5), if a written certification is filed under Subsection
150 (2), the following circumstances may constitute good cause for a panel to order a grand jury to
151 be summoned unless the panel determines the matter was properly screened and declined by

152 the prosecuting agency or a criminal prosecution has already commenced against the subject
153 for the conduct:

154 (a) the subject is or was a peace officer who, in the course of employment, caused
155 death or serious bodily injury to an individual;

156 (b) the subject is or was a public employee who, in the course of public employment,
157 engaged in criminal activity;

158 (c) the subject is or was a public official who, in the role of the appointed or elected
159 position, engaged in criminal activity;

160 (d) commencing a prosecution by information would likely threaten a victim's right to
161 justice and due process considering the victim's vulnerability, the nature of how the person was
162 victimized, the number of subjects, or the characteristics of a subject;

163 (e) evidence indicates a violent felony, as defined in Section 76-3-203.5, has occurred
164 and the secrecy or the subpoena power of a grand jury is necessary to successfully complete the
165 investigation;

166 (f) the suspected criminal activity includes a pattern of unlawful activity in violation of
167 Section 76-10-1603; or

168 (g) any similar circumstance that the panel determines is good cause for a grand jury to
169 be summoned.

170 ~~[(5)]~~ (7) A written certification under Subsection ~~[(3)]~~ shall contain a statement that in
171 the prosecutor's judgement a grand jury is necessary, but the certification] (2) need not contain
172 any information ~~[which]~~ that if disclosed may create a risk of:

173 (a) destruction or tainting of evidence;

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

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

176 (d) harm to any person; or

177 (e) a serious impediment to the investigation.

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

180 ~~[(7)]~~ (8) The supervising judge shall seal any written statement of facts submitted
181 under Subsection ~~[(6)]~~ (2).

182 ~~[(8)]~~ (9) The ~~[supervising]~~ chief judge ~~[may]~~ of the district shall, at the time the grand

183 jury is summoned[;], delegate the supervision of the grand jury to any judge within the district.

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

186 [~~(b) retain authority to supervise the grand jury or delegate the supervision of the grand~~
187 ~~jury to any judge of any district court within the state.]~~

188 [~~(9)~~ (10) If, after the written certification [~~under Subsection (3) the panel]~~ described in
189 Subsection (2) is submitted to a panel, the panel does not [~~order the summoning of]~~ summon a
190 grand jury or the grand jury does not return an indictment regarding the subject matter of the
191 written certification, the prosecuting attorney may release to the public a copy of the written
192 certification if in the prosecutor's judgment the release does not create a risk [~~as]~~ described in
193 Subsection [~~(5)~~] (7).

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

195 **77-10a-10. Charge of grand jury -- Rights and duties.**

196 Upon impanelment of each grand jury, the [~~judge managing]~~ managing judge for the
197 grand jury shall charge the grand jury and inform [~~it]~~ the grand jury of:

198 (1) [~~its]~~ the grand jury's duty to inquire into offenses against the criminal laws alleged
199 to have been committed within the jurisdiction;

200 (2) [~~its]~~ the grand jury's independent right to call and interrogate [~~witnesses]~~ a witness;

201 (3) [~~its]~~ the grand jury's right to request the production of documents or other evidence,
202 including exculpatory evidence;

203 (4) the necessity of finding credible evidence of each material element of any crime
204 charged before returning an indictment;

205 (5) the need to be satisfied that clear and convincing evidence exists that tends to show
206 [~~that]~~ a crime was committed by the person or persons accused before returning an indictment;

207 (6) [~~its]~~ the grand jury's right to have the prosecutor present [~~it]~~ the grand jury with
208 draft indictments for less serious charges than those originally requested by the prosecutor;

209 (7) the obligation of secrecy; and

210 (8) other duties and rights as the [~~court]~~ managing judge finds advisable.

211 Section 4. Section **77-10a-12** is amended to read:

212 **77-10a-12. Representation of state -- Appointment and compensation of special**
213 **prosecutor.**

214 (1) The state may be represented before any grand jury summoned in the state by:
 215 (a) the attorney general or any assistant attorney general;
 216 (b) a county attorney or any deputy county attorney;
 217 (c) a district attorney or any deputy district attorney;
 218 (d) a municipal attorney or any deputy municipal attorney; or
 219 (e) a special [prosecutors] prosecutor appointed under this chapter [and their assistants]
 220 or the special prosecutor's assistant.

221 [~~(2) The supervising judge shall determine if a special prosecutor is necessary. A~~
 222 ~~special prosecutor may be appointed]~~

223 (2) When a grand jury is summoned based on a written certification submitted in
 224 accordance with Subsection 77-10a-2(2) by the office of the attorney general, county attorney,
 225 district attorney, or municipal attorney, an attorney from the certifying office shall represent the
 226 state.

227 (3) (a) When the grand jury is summoned based on a written certification under
 228 Subsection 77-10a-2(2) by a person not listed in Subsection (2), a panel shall determine
 229 whether the state is to be represented by one of the attorneys identified in Subsection (2) or if a
 230 special prosecutor is necessary.

231 (b) Except as provided in Subsection (3)(c), the panel shall appoint the attorney who
 232 would otherwise represent the state if the prosecution had commenced by information.

233 (c) A panel may appoint a special prosecutor only upon good cause shown and after the
 234 supervising judge makes a written finding that a conflict of interest exists in the Office of the
 235 Attorney General, the office of the county attorney, district attorney, or municipal attorney who
 236 would otherwise represent the state before the grand jury.

237 [~~(3) In selecting a special prosecutor, the supervising judge shall give preference to the~~
 238 ~~attorney general and assistant attorneys general, county attorneys, district attorneys, or~~
 239 ~~municipal attorneys and their deputies.]~~

240 (4) In selecting a special prosecutor, the supervising judge shall give preference to:

- 241 (a) the attorney general or an assistant attorney general;
- 242 (b) a county attorney, district attorney, or municipal attorney; or
- 243 (c) a deputy of an attorney described in Subsection (4)(b).

244 [~~(4)~~] (5) (a) The compensation of a special prosecutor appointed under this chapter

245 who is an employee of the Office of the Attorney General, the office of a county attorney,
 246 district attorney, or municipal attorney is only the current compensation received in that office.

247 (b) The compensation for an appointed special prosecutor who is not an employee of a
 248 prosecutorial office under Subsection [~~(4)~~] (5)(a) shall be comparable to the compensation of a
 249 deputy or assistant attorney general having similar experience to that of the special prosecutor.

250 [~~(5)~~] (6) The attorney general, county attorney, district attorney, or municipal attorney
 251 may elect to have a special prosecutor appointed by the supervising judge at the expense of the
 252 governmental entity supporting the electing prosecutor. Upon receipt of written notice from
 253 the prosecutor of that election, the supervising judge shall appoint a special prosecutor in
 254 accordance with this section. The electing prosecutor's supporting governmental entity shall
 255 reimburse the state for expenses incurred in appointment and compensation of the special
 256 prosecutor.

257 Section 5. Section 77-10a-13 is amended to read:

258 **77-10a-13. Location -- Who may be present -- Witnesses -- Witnesses who are**
 259 **subjects -- Evidence -- Contempt -- Notice -- Record of proceedings -- Disclosure.**

260 (1) The managing judge shall designate the place where the grand jury meets. The
 261 grand jury may, upon request and with the permission of the managing judge, meet and conduct
 262 business any place within the [state] judicial district. Subject to the approval of the managing
 263 judge, the grand jury shall determine the times at which [it] the grand jury meets.

264 (2) (a) Attorneys representing the state, special prosecutors appointed under Section
 265 77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and
 266 a court reporter or operator of a recording device to record the proceedings may be present
 267 while the grand jury is in session.

268 (b) [~~No~~] A person other than the jurors may not be present while the grand jury is
 269 deliberating.

270 (3) (a) [~~The attorneys~~] An attorney representing the state and [~~the~~] a special
 271 [~~prosecutors~~] prosecutor may subpoena [~~witnesses~~] a witness to appear before the grand jury
 272 and may subpoena evidence in the name of the grand jury without the prior approval or consent
 273 of the grand jury or the court. The jury may request that other witnesses or evidence be
 274 subpoenaed.

275 (b) [~~Subpoenas~~] A subpoena may be issued in the name of the grand jury to any person

276 located within the state and for any evidence located within the state or as otherwise provided
277 by law.

278 (c) Except as provided in Subsection (3)(d), a subpoena requiring a minor, who is a
279 victim of a crime, to testify before a grand jury may not be served less than 72 hours before the
280 victim is required to testify.

281 (d) A subpoena may be served upon a minor less than 72 hours before the minor is
282 required to testify if the managing judge makes a factual finding that the minor was
283 intentionally concealed to prevent service or that a shorter period is reasonably necessary to
284 prevent:

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

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

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

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

289 (e) The service requirement in Subsection (3)(c) may be asserted only by or on behalf
290 of the minor and is not a basis for invalidation of the minor's testimony or any indictment
291 issued by the grand jury.

292 (f) The service requirement of Subsection (3)(d) may be asserted by a parent or legal
293 guardian of the minor on the minor's behalf.

294 (g) If the managing judge finds it necessary to prevent any of the actions enumerated in
295 Subsections (3)(d)(i) through (iv) or to otherwise protect the minor, the judge may appoint a
296 guardian ad litem to receive service on behalf of the minor, to represent the minor, and to
297 protect the interests of the minor.

298 (h) If the minor served under Subsection (3)(d) has no parent, legal guardian, or
299 guardian ad litem with whom to confer ~~[prior to]~~ before the grand jury hearing, the managing
300 judge shall appoint legal counsel to represent the minor at the hearing.

301 (i) For any minor served with a subpoena under this section, ~~[attorneys]~~ an attorney
302 representing the state, or a special ~~[prosecutors]~~ prosecutor appointed under Section 77-10a-12,
303 shall interview and prepare the minor in the presence of the minor's parent or legal guardian
304 and their attorney, or a guardian ad litem at least 24 hours ~~[prior to]~~ before the time the minor
305 is required to testify. The provisions of this ~~[subsection]~~ Subsection (3)(i) requiring the
306 presence of the minor's parent do not apply if:

307 (i) the parent is the subject of the grand jury investigation; or

308 (ii) the parent is engaged in frustrating, or conspires with another to frustrate, the
309 protections and purposes of Subsection (3)(d).

310 (j) The managing judge may enter any order necessary to secure compliance with any
311 subpoena issued in the name of the grand jury.

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

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

316 (i) of ~~[his]~~ the right to be represented by counsel;

317 (ii) that ~~[he]~~ the witness is a subject;

318 (iii) that ~~[he]~~ the witness may claim ~~[his]~~ a privilege against self-incrimination; and

319 (iv) of the general scope of the grand jury's investigation.

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

322 (i) of ~~[his]~~ the right to be represented by counsel;

323 (ii) that ~~[he]~~ the witness is a target;

324 (iii) that ~~[he]~~ the witness may claim ~~[his]~~ a privilege against self-incrimination;

325 (iv) that the attorney for the state, the special prosecutor, or the grand jury is in
326 possession of substantial evidence linking ~~[him]~~ the witness to the commission of a crime for
327 which ~~[he]~~ the witness could be charged; and

328 (v) of the general nature of that charge and of the evidence that would support the
329 charge.

330 (d) This Subsection (4) does not require the attorney for the state, the special
331 prosecutor, or the grand jury to disclose to any subject or target:

332 (i) the names or identities of witnesses, sources of information, or informants~~[-or~~
333 ~~disclose]; or~~

334 (ii) information in detail or in a fashion that would jeopardize or compromise any
335 ongoing criminal investigation or endanger any person or the community.

336 (5) (a) The grand jury shall receive evidence without regard for the formal rules of
337 evidence, except the grand jury may receive hearsay evidence only under the same provisions

338 and limitations that apply to preliminary hearings.

339 (b) Any person, including a witness who has previously testified or produced books,
340 records, documents, or other evidence, may present exculpatory evidence to the attorney
341 representing the state or the special prosecutor and request that it be presented to the grand
342 jury, or request to appear personally before the grand jury to testify or present evidence to that
343 body. The attorney for the state or the special prosecutor shall forward the request to the grand
344 jury.

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

350 (6) (a) The managing judge has the contempt power and authority inherent in the court
351 over which the managing judge presides and as provided by statute.

352 (b) When a witness in any proceeding before or ancillary to any grand jury appearance
353 refuses to comply with an order from the managing judge to testify or provide other
354 information, including any book, paper, document, record, recording, or other material without
355 having a recognized privilege, the attorney for the state or special prosecutor may apply to the
356 managing judge for an order directing the witness to show cause why the witness should not be
357 held in contempt.

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

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

365 (e) Any confinement for refusal to comply with an order to testify or produce other
366 information shall continue until the witness is willing to give the testimony or provide the
367 information. A period of confinement may not exceed the term of the grand jury, including
368 extensions, before which the refusal to comply with the order occurred. In any event, the

369 confinement may not exceed one year.

370 (f) A person confined under this Subsection (6) for refusal to testify or provide other
371 information concerning any transaction, set of transactions, event, or events may not be again
372 confined under this Subsection (6) or for criminal contempt for a subsequent refusal to testify
373 or provide other information concerning the same transaction, set of transactions, event, or
374 events.

375 (g) Any person confined under this section may be admitted to bail or released in
376 accordance with local procedures pending the determination of an appeal taken by the person
377 from the order of the person's confinement unless the appeal affirmatively appears to be
378 frivolous or taken for delay. Any appeal from an order of confinement under this section shall
379 be disposed of as soon as practicable, pursuant to an expedited schedule and in no event more
380 than 30 days from the filing of the appeal.

381 (7) (a) [~~All proceedings~~] A proceeding, except when the grand jury is deliberating or
382 voting, shall be recorded stenographically or by an electronic recording device. An
383 unintentional failure of any recording to reproduce all or any portion of a proceeding does not
384 affect the validity of any prosecution or indictment. The recording or reporter's notes or any
385 transcript prepared from them shall remain in the custody or control of the attorney for the state
386 or the special prosecutor unless otherwise ordered by the managing judge in a particular case.

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

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

394 (i) an attorney for the state or a special prosecutor for use in the performance of that
395 attorney's duty; and

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

399 (d) [~~Any person~~] An individual to whom matters are disclosed under this section may

400 not ~~[utilize]~~ use that grand jury material for any purpose other than assisting the attorney for the
401 state or the special prosecutor in performance of that attorney's duty to enforce the state's
402 criminal laws. An attorney for the state or the special prosecutor shall promptly provide the
403 managing judge with the ~~[names of the persons]~~ names of each individual to whom the
404 disclosure ~~[has been]~~ is made and shall certify that the attorney has advised the ~~[person of the~~
405 ~~person's]~~ individual of the individual's obligation of secrecy under this section.

406 (e) Disclosure otherwise prohibited by this section of matters occurring before the
407 grand jury may also be made when:

408 (i) directed by the managing judge or by any court before which the indictment that
409 involves matters occurring before the grand jury that are subject to disclosure is to be tried,
410 preliminary to or in connection with a judicial proceeding;

411 (ii) permitted by the managing judge at the request of the defendant, upon a showing
412 that grounds may exist for a motion to dismiss the indictment because of matters occurring
413 before the grand jury;

414 (iii) the disclosure is made by an attorney for the state or the special prosecutor to
415 another state or local grand jury or a federal grand jury;

416 (iv) permitted by the managing judge at the request of an attorney for the state or the
417 special prosecutor, upon a showing that the matters may disclose a violation of federal criminal
418 law, to an appropriate official of the federal government for the purpose of enforcing federal
419 law; or

420 (v) showing of special need is made and the managing judge is satisfied that disclosure
421 of the information or matters is essential for the preparation of a defense.

422 (f) When the matters are transcripts of testimony given by witnesses ~~[the state or~~
423 ~~special prosecutor intends to call in the state's case in chief in any trial upon an indictment~~
424 ~~returned by the grand jury before which the witnesses testified]~~, the attorney for the state or the
425 special prosecutor shall, ~~[no later than 30 days before trial]~~ as soon as practicable following
426 indictment and before the defendant is required to plead, provide the defendant with access to
427 the transcripts. The attorney for the state or the special prosecutor shall at the same time
428 provide the defendant with access to all exculpatory evidence presented to the grand jury prior
429 to indictment.

430 (g) When the managing judge orders disclosure of matters occurring before the grand

431 jury, disclosure shall be made in a manner, at a time, and under conditions the managing judge
432 directs.

433 (h) A petition for disclosure made under Subsection (7)(e)(ii) shall be filed with the
434 managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon
435 the attorney for the state or the special prosecutor, the parties to the judicial proceeding if
436 disclosure is sought in connection with the proceeding, and other persons as the managing
437 judge directs. The managing judge shall afford those persons a reasonable opportunity to
438 appear and be heard.

439 (8) [~~Records, orders, and subpoenas~~] A record, order, or subpoena relating to grand
440 jury proceedings shall be kept under seal to the extent and so long as necessary to prevent
441 disclosure of matters occurring before the grand jury other than as provided in this section.

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

445 Section 6. Section **77-10a-17** is amended to read:

446 **77-10a-17. Grand jury report on noncriminal misconduct -- Action on the report.**

447 (1) A grand jury may upon completion of [~~its~~] the grand jury's original term or each
448 extension, with the concurrence of a majority of [~~its~~] the grand jury's members, submit to the
449 managing judge a report concerning noncriminal misconduct, malfeasance, or misfeasance in
450 office as a basis for a recommendation of removal or disciplinary action against a public officer
451 or employee.

452 (2) The managing judge to whom the report is submitted shall examine [~~it~~] the report
453 and the minutes of the grand jury. The managing judge shall make an order accepting and
454 filing the report as a public record, but only if the managing judge is satisfied that [~~it~~] the report
455 complies with Subsection (1) and:

456 (a) the report is based on facts revealed during the grand jury's investigation and is
457 supported by a preponderance of evidence; and

458 (b) each [~~person~~] individual named and any reasonable number of witnesses on [~~his~~]
459 the individual's behalf as designated by [~~him~~] the individual to the foreman of the grand jury
460 were afforded an opportunity to testify before the grand jury [~~prior to~~] before the filing of the
461 report.

462 (3) An order accepting a report made under this section and the report itself shall be
463 sealed by the managing judge and may not be filed as a public record or be subject to subpoena
464 or otherwise made public until:

465 (a) at least 31 days after a copy of the order and report are served on each public officer
466 or employee named and an answer has been filed;

467 (b) the time for filing an answer has expired; or

468 (c) an appeal is taken or until all rights of review of the public officer or employee
469 named have expired or terminated in an order accepting the report.

470 (4) (a) An order accepting the report may not be entered until 30 days after the delivery
471 of the report to the public officer or body having jurisdiction, responsibility, or authority over
472 each public officer or employee named in the report.

473 (b) The managing judge may issue [~~orders it~~] an order the managing judge finds
474 necessary and appropriate to prevent unauthorized publication of a report. Unauthorized
475 publication of a report may be punished as contempt of court.

476 (5) (a) A public officer or employee named in a report may file with the clerk a verified
477 answer to the report not later than 20 days after service of the order and report upon [~~him~~] the
478 public officer or employee. Upon a showing of good cause, the managing judge may grant the
479 public officer or employee an extension of time to file an answer and may authorize limited
480 publication of the report as necessary to prepare an answer.

481 (b) The answer shall plainly and concisely state the facts and law constituting the
482 defense of the public officer or employee to the charges in the report. Except for those parts
483 the managing judge determines have been inserted scandalously, prejudiciously, or
484 unnecessarily, the answer becomes an appendix to the report.

485 (6) Upon the submission of a report made under this section the managing judge shall
486 order the report sealed if [~~he~~] the managing judge finds the filing of the report as a public
487 record may prejudice fair consideration of a pending criminal matter. The report may not be
488 subject to subpoena or public inspection during the pendency of the criminal matter except
489 upon order of the managing judge.

490 (7) (a) When the managing judge to whom a report is submitted is not satisfied that the
491 report complies with [~~the provisions of~~] this section, [~~he~~] the managing judge may direct that
492 additional testimony be taken before the same grand jury or [~~he~~] the managing judge shall

493 make an order sealing the report.

494 (b) If the report is sealed, it may not be filed as a public record or be subject to
495 subpoena or otherwise made public until the provisions of this section are met.

496 (8) A grand jury's term may be extended by the managing judge so additional
497 testimony may be taken or the provisions of this section met.

498 Section 7. Section **77-10a-20** is amended to read:

499 **77-10a-20. Expenses of grand jury -- Appropriation -- Payment by state or**
500 **county.**

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

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

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

508 (d) Any amount of this appropriation remaining at the end of the fiscal year lapses into
509 the General Fund.

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

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

516 [~~(b)~~] (c) The supervising judge shall determine before the grand jury is called if the
517 allegations involve primarily the state or a county or counties and whether the request to
518 summon is from a county attorney, district attorney, or municipal attorney for purposes of
519 determining payment of expenses under this section.

520 (3) The expenses of any grand jury and the compensation for any special prosecutor
521 appointed under this chapter shall be reviewed and approved or disapproved by the clerk of the
522 court under the direction of the managing judge.