

**GRAND JURY AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill amends provisions related to grand juries.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends the requirements for calling a grand jury;
- ▶ when a county or district attorney fails to file criminal charges in a case where an 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;
- ▶ amends provisions related to disclosure of grand jury proceedings, including requiring a managing judge to order a transcript of the proceedings and classify the transcript as a public record;
- ▶ requires a county or municipality to pay the expenses of a grand jury when a grand jury is summoned at the request of a county attorney, district attorney, or municipal attorney; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

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

33 ENACTS:

34 **77-10a-13.5**, Utah Code Annotated 1953

35

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

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

38 **76-2-408. Peace officer use of force -- Investigations.**

39 (1) As used in this section:

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

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

45 (c) "In custody" means in the legal custody of a state prison, county jail, or other  
46 correctional facility, including custody that results from:

47 (i) a detention to secure attendance as a witness in a criminal case;

48 (ii) an arrest for or charging with a crime and committing for trial;

49 (iii) committing for contempt, upon civil process, or by other authority of law; or

50 (iv) sentencing to imprisonment on conviction of a crime.

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

54 (e) "Officer" means the same as the term "law enforcement officer" as that term is  
55 defined in Section 53-13-103.

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

57 (i) an officer's use of deadly force;

58 (ii) an officer's use of a dangerous weapon against a person that causes injury to any  
59 person;

60 (iii) death or serious bodily injury to any person, other than the officer, resulting from  
61 an officer's:

62 (A) use of a motor vehicle while the officer is on duty; or

63 (B) use of a government vehicle while the officer is off duty;

64 (iv) the death of a person who is in custody, but excluding a death that is the result of  
65 disease, natural causes, or conditions that have been medically diagnosed prior to the person's  
66 death; or

67 (v) the death of or serious bodily injury to a person not in custody, other than an  
68 officer, resulting from an officer's attempt to prevent a person's escape from custody, to make  
69 an arrest, or otherwise to gain physical control of a person.

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

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

72 (a) upon receiving notice of the officer-involved critical incident, the law enforcement  
73 agency having jurisdiction where the incident occurred shall, as soon as practical, notify the  
74 county or district attorney having jurisdiction where the incident occurred; and

75 (b) the chief executive of the law enforcement agency and the county or district  
76 attorney having jurisdiction where the incident occurred shall:

77 (i) jointly designate an investigating agency for the officer-involved critical incident;

78 [~~and~~]

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

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

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

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

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

93 (a) the policies and procedures the agency has adopted to select the investigating  
94 agency if an officer-involved critical incident occurs in its jurisdiction and one of its officers is

95 alleged to have caused or contributed to the officer-involved incident; and

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

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

100 **77-10a-1. Definitions.**

101 As used in this chapter:

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

103 (a) the state court administrator; or ~~his~~

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

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

106 ~~(2)~~ (3) "Managing judge" means the supervising judge when ~~he~~ the supervising  
107 judge retains authority to manage a grand jury, or the district court judge to whom the  
108 supervising judge delegates management of a grand jury.

109 ~~(3)~~ (4) "Presiding officer" means the presiding officer of the Judicial Council.

110 ~~(4)~~ (5) "Subject" means a person whose conduct is within the scope of the grand  
111 jury's investigation, and that conduct exposes the person to possible criminal prosecution.

112 ~~(5)~~ (6) "Supervising judge" means the district court judge appointed by the presiding  
113 officer to supervise the five-judge grand jury panel.

114 ~~(6)~~ (7) "Target" means a person regarding whom the attorney for the state, the special  
115 prosecutor, or the grand jury has substantial evidence that links that person to the commission  
116 of a crime and who could be indicted or charged with that crime.

117 ~~(7)~~ (8) "Witness" means a person who appears before the grand jury either voluntarily  
118 or pursuant to subpoena for the purpose of providing testimony or evidence for the grand jury's  
119 use in discharging ~~its~~ the grand jury's responsibilities.

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

121 **77-10a-2. Panel of judges -- Appointment -- Membership -- Ordering of grand**  
122 **jury.**

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

- 126           **(b)** The presiding officer may appoint senior status district court judges to the panel.
- 127           **(c)** The presiding officer shall designate one member of the panel as supervising judge  
128 to serve at the pleasure of the presiding officer.
- 129           **(d)** The panel has the authority of the district court.
- 130           ~~[(b)]~~ **(2) (a)** To ensure geographical diversity on the panel:
- 131           **(i)** one judge shall be appointed from the first or second district for a five-year term~~[-];~~
- 132           **(ii)** one judge shall be appointed from the third district for a four-year term~~[-];~~
- 133           **(iii)** one judge shall be appointed from the fourth district for a three-year term~~[-];~~
- 134           **(iv)** one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a  
135 two-year term~~[-];~~ and
- 136           **(v)** one judge shall be appointed from the third district for a one-year term.
- 137           **(b)** Following the first term, all terms on the panel are for five years.
- 138           ~~[(c)]~~ **(3) (a)** The panel shall schedule hearings in each judicial district at least once  
139 every three years and may meet at any location within the state.
- 140           **(b)** Three members of the panel constitute a quorum for the transaction of panel  
141 business.
- 142           **(c)** The panel shall act by the concurrence of a majority of members present and may  
143 act through the supervising judge or managing judge.
- 144           **(d)** The schedule for the hearings shall be set by the panel and published by the  
145 Administrative Office of the Courts. ~~[Persons who desire to appear before the panel]~~
- 146           **(e)** If a person desires to appear before the panel, the person shall schedule an  
147 appointment with the Administrative Office of the Courts at least 10 days in advance.
- 148           **(f)** If no appointments are scheduled, the hearing may be canceled. ~~[Persons appearing~~  
149 ~~before the panel]~~
- 150           **(g)** If a person appears before the panel, the person shall be placed under oath and  
151 examined by the judges conducting the hearings.
- 152           **(h)** Hearsay evidence may be presented at the hearings only under the same provisions  
153 and limitations that apply to preliminary hearings.
- 154           ~~[(2)]~~ **(4) (a)** If the panel finds good cause to believe a grand jury is necessary, the panel  
155 shall make ~~[its]~~ the panel's findings in writing and may order a grand jury to be summoned.
- 156           **(b)** The panel may refer a matter to the attorney general, county attorney, district

157 attorney, or city attorney for investigation and prosecution.

158 (c) The referral under Subsection (4)(b) shall contain as much of the information  
159 presented to the panel as the panel determines relevant.

160 (d) The attorney general, county attorney, district attorney, or city attorney shall report  
161 to the panel the results of any investigation and whether the matter will be prosecuted by a  
162 prosecutor's information.

163 (e) The report shall be filed with the panel within 120 days after the referral unless the  
164 panel provides for a different amount of time.

165 (f) If the panel is not satisfied with the action of the attorney general, county attorney,  
166 district attorney, or city attorney, the panel may order a grand jury to be summoned.

167 ~~[(3) When]~~ (5) (a) If the attorney general, a county attorney, a district attorney, a  
168 municipal attorney, or a special prosecutor appointed under Section 77-10a-12 ~~[certifies in~~  
169 ~~writing to the supervising judge that in his judgment]~~ determines that a grand jury is necessary  
170 because of criminal activity in the state, the attorney general, county attorney, district attorney,  
171 municipal attorney, or special prosecutor shall certify the necessity for a grand jury, in writing,  
172 to the supervising judge.

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

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

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

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

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

182 ~~[(4)]~~ (6) In determining whether good cause exists under Subsection ~~[(3)]~~ (4) or (5), the  
183 panel shall consider, among other factors, whether a grand jury is needed to help maintain  
184 public confidence in the impartiality of the criminal justice process.

185 ~~[(5)]~~ (7) A written certification under Subsection ~~[(3)]~~ (5)(a) shall contain a statement  
186 that in the prosecutor's ~~[judgement]~~ judgment a grand jury is necessary, but the certification  
187 need not contain any information ~~[which]~~ that if disclosed may create a risk of:

- 188 (a) destruction or tainting of evidence;  
 189 (b) flight or other conduct by the subject of the investigation to avoid prosecution;  
 190 (c) damage to a person's reputation or privacy;  
 191 (d) harm to any person; or  
 192 (e) a serious impediment to the investigation.

193 ~~[(6)]~~ (8) A written certification under Subsection ~~[(3)]~~ (5)(a) shall be accompanied by a  
 194 statement of facts in support of the need for a grand jury.

195 ~~[(7)]~~ (9) The supervising judge shall seal any written statement of facts submitted  
 196 under Subsection ~~[(6)]~~ (8).

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

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

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

203 ~~[(9)]~~ (11) If after the certification under Subsection ~~[(3)]~~ (5)(a) the panel does not order  
 204 the summoning of a grand jury or the grand jury does not return an indictment regarding the  
 205 subject matter of the certification, the prosecuting attorney may release to the public a copy of  
 206 the written certification if in the prosecutor's judgment the release does not create a risk as  
 207 described in Subsection ~~[(5)]~~ (7).

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

209 **77-10a-13. Location -- Who may be present -- Witnesses -- Witnesses who are**  
 210 **subjects -- Evidence -- Contempt -- Notice.**

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

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

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

216 (2) (a) ~~[Attorneys representing the state, special prosecutors appointed under Section~~  
 217 ~~77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and~~  
 218 ~~a court reporter or operator of a recording device to record the proceedings may be present~~

219 ~~while the grand jury is in session.] The following persons may be present while a grand jury is  
 220 in session:~~

221 (i) an attorney representing the state;

222 (ii) a special prosecutor appointed under Section 77-10a-12;

223 (iii) the witness under examination;

224 (iv) if needed, an interpreter;

225 (v) counsel for the witness;

226 (vi) a court reporter; or

227 (vii) an operator of a recording device to record the proceedings.

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

229 (3) (a) ~~[The attorneys]~~ An attorney representing the state and ~~[the]~~ a special

230 ~~[prosecutors]~~ prosecutor may:

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

232 (ii) subpoena evidence in the name of the grand jury without the prior approval or

233 consent of the grand jury or the court. ~~[The jury]~~

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

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

236 person located within the state and for any evidence located within the state or as otherwise

237 provided by law.

238 ~~[(c)]~~ (4) (a) Except as provided in Subsection ~~[(3)(d)]~~ (4)(b), a subpoena requiring a

239 minor, who is a victim of a crime, to testify before a grand jury may not be served less than 72

240 hours before the ~~[victim]~~ minor is required to testify.

241 ~~[(d)]~~ (b) A subpoena may be served upon a minor less than 72 hours before the minor

242 is required to testify if the managing judge makes a factual finding that the minor was

243 intentionally concealed to prevent service or that a shorter period is reasonably necessary to

244 prevent:

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

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

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

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

249 ~~[(e)]~~ (c) The service requirement in Subsection ~~[(3)(e)]~~ (4)(a) may be asserted only by



250 or on behalf of the minor and is not a basis for invalidation of the minor's testimony or any  
251 indictment issued by the grand jury.

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

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

258 ~~[(h)]~~ (6) If the minor served under Subsection ~~[(3)(d)]~~ (4)(b) has no parent, legal  
259 guardian, or guardian ad litem with whom to confer prior to the grand jury hearing, the  
260 managing judge shall appoint legal counsel to represent the minor at the hearing.

261 ~~[(i)]~~ (7) (a) For any minor served with a subpoena under this section, ~~[attorneys]~~ an  
262 attorney representing the state, or a special ~~[prosecutors]~~ prosecutor appointed under Section  
263 77-10a-12, shall interview and prepare the minor in the presence of the minor's parent or legal  
264 guardian and ~~[their]~~ the minor's attorney, or a guardian ad litem at least 24 hours prior to the  
265 time the minor is required to testify.

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

268 (i) the parent or legal guardian is the subject of the grand jury investigation; or

269 (ii) the parent or legal guardian is engaged in frustrating, or conspires with another to  
270 frustrate, the protections and purposes of Subsection ~~[(3)(d)]~~ (4)(b).

271 ~~[(j)]~~ (8) The managing judge may enter any order necessary to secure compliance with  
272 any subpoena issued in the name of the grand jury.

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

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

278 (i) of ~~[his]~~ the witness's right to be represented by counsel;

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

280 (iii) that ~~[he]~~ the witness may claim ~~[his]~~ the witness's privilege against

281 self-incrimination; and

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

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

285 (i) of [~~his~~] the witness's right to be represented by counsel;

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

287 (iii) that [~~he~~] the witness may claim [~~his~~] the witness's privilege against  
288 self-incrimination;

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

292 (v) of the general nature of that charge and of the evidence that would support the  
293 charge.

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

299 [~~(5)~~] (10) (a) The grand jury shall receive evidence without regard for the formal rules  
300 of evidence, except the grand jury may receive hearsay evidence only under the same  
301 provisions and limitations that apply to preliminary hearings.

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

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

309 (c) When the attorney for the state or the special prosecutor is personally aware of  
310 substantial and competent evidence negating the guilt of a subject or target that might  
311 reasonably be expected to lead the grand jury not to indict, the attorney or special prosecutor

312 shall present or otherwise disclose the evidence to the grand jury before the grand jury is asked  
313 to indict that person.

314 ~~[(6)]~~ (11) (a) The managing judge has the contempt power and authority inherent in the  
315 court over which the managing judge presides and as provided ~~[by statute]~~ in Title 78B,  
316 Chapter 6, Part 3, Contempt.

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

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

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

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

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

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

336 (ii) one year.

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

342 ~~[(g)]~~ (h) Any person confined under this section may be admitted to bail or released in

343 accordance with local procedures pending the determination of an appeal taken by the person  
344 from the order of the person's confinement unless the appeal affirmatively appears to be  
345 frivolous or taken for delay.

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

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

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

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

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

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

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

373 ~~[(e) Disclosure otherwise prohibited by this section of matters occurring before the~~

374 grand jury may also be made when:]

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

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

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

383           ~~[(iv) permitted by the managing judge at the request of an attorney for the state or the~~  
384 ~~special prosecutor, upon a showing that the matters may disclose a violation of federal criminal~~  
385 ~~law, to an appropriate official of the federal government for the purpose of enforcing federal~~  
386 ~~law; or]~~

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

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

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

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

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

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

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

412 **77-10a-13.5. Disclosure of grand jury proceedings.**

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

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

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

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

421 (ii) provided in Subsection (2).

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

424 (a) a transcript of all proceedings, except for deliberations by the grand jury and the  
425 vote of any grand juror, to be prepared; and

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

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

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

433 (4) Any matter occurring before a grand jury, except for the grand jury's deliberations  
434 and the vote of any grand juror, may be disclosed:

435 (a) to an attorney for the state or a special prosecutor for use in the performance of that

436 attorney's duty;

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

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

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

446 (e) when the disclosure is made by an attorney representing the state, or the special  
447 prosecutor, to another state or local grand jury or a federal grand jury;

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

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

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

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

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

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

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

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

466 (6) (a) If a grand jury indicts a defendant, the attorney representing the state, or the

467 special prosecutor, shall disclose any matter that occurred before the grand jury, except for the  
468 grand jury's deliberations and the vote of any grand juror, to the defendant no later than 30 days  
469 before trial.

470 (b) A disclosure under Subsection (6)(a) shall include all exculpatory evidence  
471 presented to the grand jury prior to indictment.

472 (7) Except as provided in Subsection (2), if the managing judge orders disclosure of  
473 matters occurring before the grand jury, the disclosure shall be made in a manner, at a time, and  
474 under conditions the managing judge directs.

475 (8) (a) A petition for disclosure made under Subsection (4)(d) shall be filed with the  
476 managing judge.

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

481 (c) The managing judge shall afford persons under Subsection (8)(b) a reasonable  
482 opportunity to appear and be heard.

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

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

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

490 **77-10a-20. Expenses of grand jury -- Appropriation -- Payment by state or**  
491 **county.**

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

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

497 (c) For this purpose, an appropriation of \$25,000 is made from the General Fund to the



498 Judicial Council as a separate line item in the budget of the Judicial Council.

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

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

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

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

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

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

513 ~~[(3)]~~ (4) The expenses of any grand jury and the compensation for any special  
514 prosecutor appointed under this chapter shall be reviewed and approved or disapproved by the  
515 clerk of the court under the direction of the managing judge.