

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

- (1)
  - (a) The presiding officer of the Judicial Council shall appoint a panel of five judges from the district courts of the state to hear in secret all persons claiming to have information that would justify the calling of a grand jury. The presiding officer may appoint senior status district court judges to the panel. The presiding officer shall designate one member of the panel as supervising judge to serve at the pleasure of the presiding officer. The panel has the authority of the district court.
  - (b) To ensure geographical diversity on the panel one judge shall be appointed from the first or second district for a five-year term, one judge shall be appointed from the third district for a four-year term, one judge shall be appointed from the fourth district for a three-year term, one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year term, and one judge shall be appointed from the third district for a one-year term. Following the first term, all terms on the panel are for five years.
  - (c) The panel shall schedule hearings in each judicial district at least once every three years and may meet at any location within the state. Three members of the panel constitute a quorum for the transaction of panel business. The panel shall act by the concurrence of a majority of members present and may act through the supervising judge or managing judge. The schedule for the hearings shall be set by the panel and published by the Office of the Court Administrator. Persons who desire to appear before the panel shall schedule an appointment with the Office of the Court Administrator at least 10 days in advance. If no appointments are scheduled, the hearing may be canceled. Persons appearing before the panel shall be placed under oath and examined by the judges conducting the hearings. Hearsay evidence may be presented at the hearings only under the same provisions and limitations that apply to preliminary hearings.
- (2)
  - (a) If the panel finds good cause to believe a grand jury is necessary, the panel shall make its findings in writing and may order a grand jury to be summoned.
  - (b) The panel may refer a matter to the attorney general, county attorney, district attorney, or city attorney for investigation and prosecution. The referral shall contain as much of the information presented to the panel as the panel determines relevant. The attorney general, county attorney, district attorney, or city attorney shall report to the panel the results of any investigation and whether the matter will be prosecuted by a prosecutor's information. The report shall be filed with the panel within 120 days after the referral unless the panel provides for a different amount of time. If the panel is not satisfied with the action of the attorney general, county attorney, district attorney, or city attorney, the panel may order a grand jury to be summoned.
- (3) When the attorney general, a county attorney, a district attorney, municipal attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the supervising judge that in his judgment a grand jury is necessary because of criminal activity in the state, the panel shall order a grand jury to be summoned if the panel finds good cause exists.
- (4) In determining whether good cause exists under Subsection (3), the panel shall consider, among other factors, whether a grand jury is needed to help maintain public confidence in the impartiality of the criminal justice process.
- (5) A written certification under Subsection (3) shall contain a statement that in the prosecutor's judgement a grand jury is necessary, but the certification need not contain any information which if disclosed may create a risk of:
  - (a) destruction or tainting of evidence;

- (b) flight or other conduct by the subject of the investigation to avoid prosecution;
  - (c) damage to a person's reputation or privacy;
  - (d) harm to any person; or
  - (e) a serious impediment to the investigation.
- (6) A written certification under Subsection (3) shall be accompanied by a statement of facts in support of the need for a grand jury.
- (7) The supervising judge shall seal any written statement of facts submitted under Subsection (6).
- (8) The supervising judge may at the time the grand jury is summoned:
- (a) order that it be drawn from the state at large as provided in this chapter or from any district within the state; and
  - (b) retain authority to supervise the grand jury or delegate the supervision of the grand jury to any judge of any district court within the state.
- (9) If after the certification under Subsection (3) the panel does not order the summoning of a grand jury or the grand jury does not return an indictment regarding the subject matter of the certification, the prosecuting attorney may release to the public a copy of the written certification if in the prosecutor's judgment the release does not create a risk as described in Subsection (5).

Amended by Chapter 34, 2010 General Session  
Amended by Chapter 96, 2010 General Session