

Chapter 10a Grand Jury Reform

77-10a-1 Definitions.

As used in this chapter:

- (1) "Clerk of the court" means the state court administrator or his designee.
- (2) "Managing judge" means the supervising judge when he retains authority to manage a grand jury, or the district court judge to whom the supervising judge delegates management of a grand jury.
- (3) "Presiding officer" means the presiding officer of the Judicial Council.
- (4) "Subject" means a person whose conduct is within the scope of the grand jury's investigation, and that conduct exposes the person to possible criminal prosecution.
- (5) "Supervising judge" means the district court judge appointed by the presiding officer to supervise the five-judge grand jury panel.
- (6) "Target" means a person regarding whom the attorney for the state, the special prosecutor, or the grand jury has substantial evidence that links that person to the commission of a crime and who could be indicted or charged with that crime.
- (7) "Witness" means a person who appears before the grand jury either voluntarily or pursuant to subpoena for the purpose of providing testimony or evidence for the grand jury's use in discharging its responsibilities.

Enacted by Chapter 318, 1990 General Session

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 Administrative Office of the Courts. Persons who desire to appear before the panel shall schedule an appointment with the Administrative Office of the Courts 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 25, 2018 General Session

77-10a-3 Scope of grand jury inquiry.

Any grand jury summoned under this chapter may inquire into and indict for any criminal activity occurring within the state.

Enacted by Chapter 318, 1990 General Session

77-10a-4 Number of members -- Number required for indictment.

- (1) Any grand jury summoned under this chapter shall consist of not fewer than nine or more than 15 members.
- (2) The grand jury may return an indictment only if at least three-fourths of the members, or the next highest whole number, vote in favor of the indictment.

Enacted by Chapter 318, 1990 General Session

77-10a-5 Grand jurors -- Qualification and selection -- Limits on disclosure.

- (1) Grand jurors shall meet the qualifications provided for jurors generally in Title 78B, Chapter 1, Part 1, Jury and Witness Act. Grand jurors shall be selected from the prospective jury list as provided in Section 78B-1-107.
- (2) The names of grand jurors are classified as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 115, 2017 General Session

77-10a-7 Selection of grand jurors -- Notice -- Examination -- Qualification -- Alternates.

- (1) When the supervising judge orders that a grand jury be summoned, the managing judge shall direct the clerk to select at random from the master list the number of names determined by the managing judge to ensure that the required number of grand jurors under this chapter may be qualified to constitute the grand jury.
- (2)
 - (a) The managing judge may direct the clerk to draw additional names from the master list so alternate grand jurors may be designated at the time the grand jury is selected.
 - (b) Alternate grand jurors shall be drawn in the same manner and have the same qualifications as the regular grand jurors. If impanelled, they are subject to the same challenges, shall take the same oath, and have the same functions, powers, facilities, and privileges as the regular jurors.
- (3) The clerk shall cause each person drawn for service on the grand jury or as an alternate to be notified of when and where to report for service. Notice may be given by telephone or by service of a summons, either personally or by first class mail addressed to the prospective juror's current residence, place of business, or post office box.
- (4) The names of those drawn for service on the grand jury or as alternates and the contents of all grand juror questionnaires may not be made available to the public.
- (5)
 - (a) At the time and place specified for the appearance of the persons summoned to serve as grand jurors and alternates, the managing judge shall examine the prospective grand jurors and alternates. Before accepting any person as a grand juror or alternate, the managing judge shall be satisfied that the person has no bias or prejudice that would prevent him from fairly and dispassionately considering the matters presented to the grand jury.
 - (b) When drawn and qualified, the person shall be accepted for service unless the managing judge in his discretion and on the application of the juror excuses him from service before he is sworn.

- (6) The managing judge may dismiss the grand jury panel if he finds there has been a material departure from the methods prescribed for the selecting, drawing, and return of the grand jury, or if there has been an intentional omission by the proper officer to summon one or more of the grand jurors drawn.
- (7) When 15 of the persons summoned as grand jurors who are qualified and not excused remain, they are the grand jury. If more than 15 qualified persons remain, their names shall be written by the clerk on separate slips, folded to conceal the names, and placed in a box. The clerk shall then draw 15 slips, and the persons whose names are drawn are the grand jury.
- (8)
 - (a) When the number of persons to be designated as alternate grand jurors who are qualified and not excused remain, they are the alternate grand jurors.
 - (b) If more than the number of alternate grand jurors designated by the managing judge remain, their names shall be written by the clerk on separate slips, folded to conceal the names, and placed in a box. The clerk shall then draw slips until the designated number of alternate grand jurors are selected.

Enacted by Chapter 318, 1990 General Session

77-10a-8 Challenge of prospective grand jurors -- Failure to comply in selection of jurors -- Remedies.

- (1) The attorney general, county attorney, district attorney, or special prosecutor may challenge:
 - (a) the array of grand jurors on the ground the grand jury was not selected, drawn, or summoned in accordance with law; and
 - (b) an individual juror on the ground the juror is not legally qualified.
- (2) Challenges shall be made before the administration of the oath to the jurors and shall be tried to the court managing the grand jury.
- (3) A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge.
- (4) In criminal cases the defendant or attorney for the state may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with this chapter in selecting the grand jury. However, he must do so before the voir dire examination begins or within seven days after the defendant or attorney for the state discovered or could have discovered the grounds by the exercise of diligence, whichever is earlier, or the motion is considered waived.
- (5)
 - (a) Any motion filed under Subsection (1), (3), or (4) must contain a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this chapter. The moving party may present in support of the motion the testimony of the clerk if he is available, any relevant records and papers used by the clerk that were not made public or otherwise available, and any other relevant evidence.
 - (b) If the managing judge determines there has been a substantial failure to comply with the provisions of this chapter in selecting the grand jury, he shall stay the proceedings pending the selection of a grand jury in conformity with this chapter or dismiss the indictment, whichever is appropriate.
- (6)
 - (a) The procedures prescribed by this section are the exclusive means by which a party accused of a crime or an attorney for the state may challenge any grand jury on the ground it was not selected in conformity with this chapter.

- (b) An indictment may not be dismissed in any case on the ground that one or more members of the grand jury that returned the indictment were not legally qualified if it appears from the record kept by the grand jury that eight or more jurors, after deducting the number not qualified, concurred in finding the indictment.

Amended by Chapter 38, 1993 General Session

77-10a-9 Oath for grand jurors.

Grand jurors and those selected as alternates shall take the following oath:

"Do you, and each of you, solemnly swear that you will diligently inquire into and make true presentment or indictment of all matters and things as are given you in charge or otherwise come to your knowledge, touching upon your grand jury service; to keep secret the counsel of the state, your fellows, and yourselves; to not present or indict any person through hatred, malice, or ill will; to not leave any person unrepresented or unindicted through fear, favor, or affection, nor for any reward, or hope or promise thereof; but in all your investigations, presentments, and indictments to seek and present the truth, the whole truth and nothing but the truth, to the best of your skill and understanding? If so, answer 'I do.'"

Enacted by Chapter 318, 1990 General Session

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

Upon impanelment of each grand jury, the judge managing the grand jury shall charge the grand jury and inform it of:

- (1) its duty to inquire into offenses against the criminal laws alleged to have been committed within the jurisdiction;
- (2) its independent right to call and interrogate witnesses;
- (3) its right to request the production of documents or other evidence, including exculpatory evidence;
- (4) the necessity of finding credible evidence of each material element of any crime charged before returning an indictment;
- (5) the need to be satisfied that clear and convincing evidence exists that tends to show that a crime was committed by the person or persons accused before returning an indictment;
- (6) its right to have the prosecutor present it with draft indictments for less serious charges than those originally requested by the prosecutor;
- (7) the obligation of secrecy; and
- (8) other duties and rights as the court finds advisable.

Enacted by Chapter 318, 1990 General Session

77-10a-11 Jury foreman -- Compensation of grand jurors.

- (1) The managing judge shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman may administer oaths and affirmations and shall sign all indictments. The foreman or another juror designated by him shall keep record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court. The record may not be made public except on order of the managing judge.
- (2) During the absence of the foreman the deputy foreman shall act as foreman.
- (3) A grand juror shall be compensated at the same rate as a juror in a state district court for each day of service.

Enacted by Chapter 318, 1990 General Session

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

- (1) The state may be represented before any grand jury summoned in the state by:
 - (a) the attorney general or any assistant attorney general;
 - (b) a county attorney or any deputy county attorney;
 - (c) a district attorney or any deputy district attorney;
 - (d) a municipal attorney or any deputy municipal attorney; or
 - (e) special prosecutors appointed under this chapter and their assistants.
- (2) The supervising judge shall determine if a special prosecutor is necessary. A special prosecutor may be appointed only upon good cause shown and after the supervising judge makes a written finding that a conflict of interest exists in the Office of the Attorney General, the office of the county attorney, district attorney, or municipal attorney who would otherwise represent the state before the grand jury.
- (3) In selecting a special prosecutor, the supervising judge shall give preference to the attorney general and assistant attorneys general, county attorneys, district attorneys, or municipal attorneys and their deputies.
- (4)
 - (a) The compensation of a special prosecutor appointed under this chapter who is an employee of the Office of the Attorney General, the office of a county attorney, district attorney, or municipal attorney is only the current compensation received in that office.
 - (b) The compensation for an appointed special prosecutor who is not an employee of a prosecutorial office under Subsection (4)(a) shall be comparable to the compensation of a deputy or assistant attorney general having similar experience to that of the special prosecutor.
- (5) The attorney general, county attorney, district attorney, or municipal attorney may elect to have a special prosecutor appointed by the supervising judge at the expense of the governmental entity supporting the electing prosecutor. Upon receipt of written notice from the prosecutor of that election, the supervising judge shall appoint a special prosecutor in accordance with this section. The electing prosecutor's supporting governmental entity shall reimburse the state for expenses incurred in appointment and compensation of the special prosecutor.

Amended by Chapter 258, 2015 General Session

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

- (1) The managing judge shall designate the place where the grand jury meets. The grand jury may, upon request and with the permission of the managing judge, meet and conduct business any place within the state. Subject to the approval of the managing judge the grand jury shall determine the times at which it meets.
- (2)
 - (a) Attorneys representing the state, special prosecutors appointed under Section 77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and a court reporter or operator of a recording device to record the proceedings may be present while the grand jury is in session.
 - (b) No person other than the jurors may be present while the grand jury is deliberating.
- (3)

- (a) The attorneys representing the state and the special prosecutors may subpoena witnesses to appear before the grand jury and may subpoena evidence in the name of the grand jury without the prior approval or consent of the grand jury or the court. The jury may request that other witnesses or evidence be subpoenaed.
 - (b) Subpoenas may be issued in the name of the grand jury to any person located within the state and for any evidence located within the state or as otherwise provided by law.
 - (c) Except as provided in Subsection (3)(d), a subpoena requiring a minor, who is a victim of a crime, to testify before a grand jury may not be served less than 72 hours before the victim is required to testify.
 - (d) A subpoena may be served upon a minor less than 72 hours before the minor is required to testify if the managing judge makes a factual finding that the minor was intentionally concealed to prevent service or that a shorter period is reasonably necessary to prevent:
 - (i) a risk to the minor's safety;
 - (ii) the concealment or removal of the minor from the jurisdiction;
 - (iii) intimidation or coercion of the minor or a family member of the minor; or
 - (iv) undue influence on the minor regarding the minor's testimony.
 - (e) The service requirement in Subsection (3)(c) may be asserted only by or on behalf of the minor and is not a basis for invalidation of the minor's testimony or any indictment issued by the grand jury.
 - (f) The service requirement of Subsection (3)(d) may be asserted by a parent or legal guardian of the minor on the minor's behalf.
 - (g) If the managing judge finds it necessary to prevent any of the actions enumerated in Subsections (3)(d)(i) through (iv) or to otherwise protect the minor, the judge may appoint a guardian ad litem to receive service on behalf of the minor, to represent the minor, and to protect the interests of the minor.
 - (h) If the minor served under Subsection (3)(d) has no parent, legal guardian, or guardian ad litem with whom to confer prior to the grand jury hearing, the managing judge shall appoint legal counsel to represent the minor at the hearing.
 - (i) For any minor served with a subpoena under this section, attorneys representing the state, or special prosecutors appointed under Section 77-10a-12, shall interview and prepare the minor in the presence of the minor's parent or legal guardian and their attorney, or a guardian ad litem at least 24 hours prior to the time the minor is required to testify. The provisions of this subsection requiring the presence of the minor's parent do not apply if:
 - (i) the parent is the subject of the grand jury investigation; or
 - (ii) the parent is engaged in frustrating, or conspires with another to frustrate, the protections and purposes of Subsection (3)(d).
 - (j) The managing judge may enter any order necessary to secure compliance with any subpoena issued in the name of the grand jury.
- (4)
- (a) Any witness who appears before the grand jury shall be advised, by the attorney for the state or the special prosecutor, of his right to be represented by counsel.
 - (b) A witness who is also a subject as defined in Section 77-10a-1 shall, at the time of appearance as a witness, be advised:
 - (i) of his right to be represented by counsel;
 - (ii) that he is a subject;
 - (iii) that he may claim his privilege against self-incrimination; and
 - (iv) of the general scope of the grand jury's investigation.

- (c) A witness who is also a target as defined in Section 77-10a-1 shall, at the time of appearance as a witness, be advised:
 - (i) of his right to be represented by counsel;
 - (ii) that he is a target;
 - (iii) that he may claim his privilege against self-incrimination;
 - (iv) that the attorney for the state, the special prosecutor, or the grand jury is in possession of substantial evidence linking him to the commission of a crime for which he could be charged; and
 - (v) of the general nature of that charge and of the evidence that would support the charge.
 - (d) This Subsection (4) does not require the attorney for the state, the special prosecutor, or the grand jury to disclose to any subject or target the names or identities of witnesses, sources of information, or informants, or disclose information in detail or in a fashion that would jeopardize or compromise any ongoing criminal investigation or endanger any person or the community.
- (5)
- (a) The grand jury shall receive evidence without regard for the formal rules of evidence, except the grand jury may receive hearsay evidence only under the same provisions and limitations that apply to preliminary hearings.
 - (b) Any person, including a witness who has previously testified or produced books, records, documents, or other evidence, may present exculpatory evidence to the attorney representing the state or the special prosecutor and request that it be presented to the grand jury, or request to appear personally before the grand jury to testify or present evidence to that body. The attorney for the state or the special prosecutor shall forward the request to the grand jury.
 - (c) When the attorney for the state or the special prosecutor is personally aware of substantial and competent evidence negating the guilt of a subject or target that might reasonably be expected to lead the grand jury not to indict, the attorney or special prosecutor shall present or otherwise disclose the evidence to the grand jury before the grand jury is asked to indict that person.
- (6)
- (a) The managing judge has the contempt power and authority inherent in the court over which the managing judge presides and as provided by statute.
 - (b) When a witness in any proceeding before or ancillary to any grand jury appearance refuses to comply with an order from the managing judge to testify or provide other information, including any book, paper, document, record, recording, or other material without having a recognized privilege, the attorney for the state or special prosecutor may apply to the managing judge for an order directing the witness to show cause why the witness should not be held in contempt.
 - (c) After submission of the application and a hearing at which the witness is entitled to be represented by counsel, the managing judge may hold the witness in contempt and order that the witness be confined, upon a finding that the refusal was not privileged.
 - (d) A hearing may not be held under this part unless 72 hours' notice is given to the witness who has refused to comply with the order to testify or provide other information, except a witness may be given a shorter notice if the managing judge upon a showing of special need so orders.
 - (e) Any confinement for refusal to comply with an order to testify or produce other information shall continue until the witness is willing to give the testimony or provide the information. A period of confinement may not exceed the term of the grand jury, including extensions, before

which the refusal to comply with the order occurred. In any event the confinement may not exceed one year.

- (f) A person confined under this Subsection (6) for refusal to testify or provide other information concerning any transaction, set of transactions, event, or events may not be again confined under this Subsection (6) or for criminal contempt for a subsequent refusal to testify or provide other information concerning the same transaction, set of transactions, event, or events.
 - (g) Any person confined under this section may be admitted to bail or released in accordance with local procedures pending the determination of an appeal taken by the person from the order of the person's confinement unless the appeal affirmatively appears to be frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, pursuant to an expedited schedule and in no event more than 30 days from the filing of the appeal.
- (7)
- (a) All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding does not affect the validity of any prosecution or indictment. The recording or reporter's notes or any transcript prepared from them shall remain in the custody or control of the attorney for the state or the special prosecutor unless otherwise ordered by the managing judge in a particular case.
 - (b) A grand juror, an interpreter, a court reporter, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the state or special prosecutor, or any person to whom disclosure is made under the provisions of this section may not disclose matters occurring before the grand jury except as otherwise provided in this section. A knowing violation of this provision may be punished as a contempt of court.
 - (c) Disclosure otherwise prohibited by this section of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to:
 - (i) an attorney for the state or a special prosecutor for use in the performance of that attorney's duty; and
 - (ii) government personnel, including those of state, local, and federal entities and agencies, as are considered necessary by the attorney for the state or special prosecutor to assist the attorney in the performance of the attorney's duty to enforce the state's criminal laws.
 - (d) Any person to whom matters are disclosed under this section may not utilize that grand jury material for any purpose other than assisting the attorney for the state or the special prosecutor in performance of that attorney's duty to enforce the state's criminal laws. An attorney for the state or the special prosecutor shall promptly provide the managing judge with the names of the persons to whom the disclosure has been made and shall certify that the attorney has advised the person of the person's obligation of secrecy under this section.
 - (e) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may also be made when:
 - (i) directed by the managing judge or by any court before which the indictment that involves matters occurring before the grand jury that are subject to disclosure is to be tried, preliminary to or in connection with a judicial proceeding;
 - (ii) permitted by the managing judge at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;
 - (iii) the disclosure is made by an attorney for the state or the special prosecutor to another state or local grand jury or a federal grand jury;

- (iv) permitted by the managing judge at the request of an attorney for the state or the special prosecutor, upon a showing that the matters may disclose a violation of federal criminal law, to an appropriate official of the federal government for the purpose of enforcing federal law; or
- (v) showing of special need is made and the managing judge is satisfied that disclosure of the information or matters is essential for the preparation of a defense.
- (f) When the matters are transcripts of testimony given by witnesses the state or special prosecutor intends to call in the state's case in chief in any trial upon an indictment returned by the grand jury before which the witnesses testified, the attorney for the state or the special prosecutor shall, no later than 30 days before trial, provide the defendant with access to the transcripts. The attorney for the state or the special prosecutor shall at the same time provide the defendant with access to all exculpatory evidence presented to the grand jury prior to indictment.
- (g) When the managing judge orders disclosure of matters occurring before the grand jury, disclosure shall be made in a manner, at a time, and under conditions the managing judge directs.
- (h) A petition for disclosure made under Subsection (7)(e)(ii) shall be filed with the managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon the attorney for the state or the special prosecutor, the parties to the judicial proceeding if disclosure is sought in connection with the proceeding, and other persons as the managing judge directs. The managing judge shall afford those persons a reasonable opportunity to appear and be heard.
- (8) Records, orders, and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and so long as necessary to prevent disclosure of matters occurring before the grand jury other than as provided in this section.
- (9) Subject to any right to an open hearing in contempt proceedings, the managing judge shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

Amended by Chapter 281, 2018 General Session

77-10a-14 Concurrence for indictment -- Proof -- Validity -- Disclosure.

- (1) An indictment may be found only upon the concurrence of at least three-fourths, or the next highest whole number, of the grand jurors.
- (2) An indictment may not be found unless the grand jurors who vote in favor of the indictment find there is clear and convincing evidence to believe the crime to be charged was committed and the person to be indicted committed the crime. An indictment may not be returned solely on the basis of incompetent hearsay.
- (3) To be valid, the indictment shall be signed by the foreman and then returned to the managing judge in open court. The clerk of the managing court shall file the indictment upon receipt.
- (4)
 - (a) The managing judge who takes the return of the indictment may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial.
 - (b) The clerk shall then seal the indictment and, except for transferring the indictment to the appropriate court for trial as provided by this chapter, may not permit any person to disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

Amended by Chapter 30, 2018 General Session

77-10a-15 Return and transfer of indictment.

Immediately upon the return of an indictment the managing judge shall enter an order transferring the indictment to a court with appropriate jurisdiction and proper venue under Section 76-1-202 to try the matter.

Enacted by Chapter 318, 1990 General Session

77-10a-16 Return of indictment -- Warrant of arrest -- Bail.

- (1) The managing judge may upon return of an indictment, when the defendant is not in custody, cause a warrant to be issued for the arrest of the defendant charged and shall fix an appropriate bail.
- (2) Return of any warrant of arrest shall be in the court to which the indictment is transferred for trial. The court to which the return is made may review bail and any conditions of detention or release.

Enacted by Chapter 318, 1990 General Session

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

- (1) A grand jury may upon completion of its original term or each extension, with the concurrence of a majority of its members, submit to the managing judge a report concerning noncriminal misconduct, malfeasance, or misfeasance in office as a basis for a recommendation of removal or disciplinary action against a public officer or employee.
- (2) The judge to whom the report is submitted shall examine it and the minutes of the grand jury. The judge shall make an order accepting and filing the report as a public record, but only if the judge is satisfied that it complies with Subsection (1) and:
 - (a) the report is based on facts revealed during the grand jury's investigation and is supported by a preponderance of evidence; and
 - (b) each person named and any reasonable number of witnesses on his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of the report.
- (3) An order accepting a report made under this section and the report itself shall be sealed by the managing judge and may not be filed as a public record or be subject to subpoena or otherwise made public until:
 - (a) at least 31 days after a copy of the order and report are served on each public officer or employee named and an answer has been filed;
 - (b) the time for filing an answer has expired; or
 - (c) an appeal is taken or until all rights of review of the public officer or employee named have expired or terminated in an order accepting the report.
- (4)
 - (a) An order accepting the report may not be entered until 30 days after the delivery of the report to the public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.
 - (b) The managing judge may issue orders it finds necessary and appropriate to prevent unauthorized publication of a report. Unauthorized publication of a report may be punished as contempt of court.
- (5)

- (a) A public officer or employee named in a report may file with the clerk a verified answer to the report not later than 20 days after service of the order and report upon him. Upon a showing of good cause, the managing judge may grant the public officer or employee an extension of time to file an answer and may authorize limited publication of the report as necessary to prepare an answer.
 - (b) The answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in the report. Except for those parts the managing judge determines have been inserted scandalously, prejudiciously, or unnecessarily, the answer becomes an appendix to the report.
- (6) Upon the submission of a report made under this section the managing judge shall order the report sealed if he finds the filing of the report as a public record may prejudice fair consideration of a pending criminal matter. The report may not be subject to subpoena or public inspection during the pendency of the criminal matter except upon order of the managing judge.
- (7)
- (a) When the managing judge to whom a report is submitted is not satisfied that the report complies with the provisions of this section, he may direct that additional testimony be taken before the same grand jury or he shall make an order sealing the report.
 - (b) If the report is sealed, it may not be filed as a public record or be subject to subpoena or otherwise made public until the provisions of this section are met.
- (8) A grand jury's term may be extended by the managing judge so additional testimony may be taken or the provisions of this section met.

Enacted by Chapter 318, 1990 General Session

77-10a-18 Grand jury term of service -- Excusing a juror.

- (1) A grand jury shall serve until discharged by the managing judge. However, a grand jury may not serve more than 18 months unless the managing judge extends the service of the grand jury, upon determining an extension is in the public interest. The extension may be no longer than a period of six months.
- (2) The managing judge may at any time excuse a juror either temporarily or permanently for cause shown. If a juror is excused permanently, the managing judge may impanel another juror in his place.

Enacted by Chapter 318, 1990 General Session

77-10a-19 Compensation for special prosecutors.

- (1) Compensation for special prosecutors under this section shall be paid by the Judicial Council. For this purpose, there is appropriated from the General Fund to the Judicial Council \$50,000 as a separate line item in the budget of the Judicial Council for the fiscal year 1989-1990. The line item shall be nonlapsing.
- (2)
 - (a) If during the fiscal year compensation of special prosecutors under this chapter exceeds \$50,000, additional compensation shall be requested as a supplemental appropriation from the Legislature.
 - (b) If during the fiscal year compensation of special prosecutors under this chapter is less than \$50,000, the balance carries over to the next fiscal year, and the appropriation for that next

fiscal year for prosecutor compensation shall be no more than the amount necessary to total \$50,000 when added to the nonlapsing balance carried over from the prior fiscal year.

Enacted by Chapter 318, 1990 General Session

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

- (1)
 - (a) The expenses of operation of a grand jury summoned under this chapter shall be paid by the Judicial Council, except under Subsection (2).
 - (b) Expenses include grand juror fees, rental of a facility, cost of transcripts, payment for a court reporter or electronic recording device, secretarial services, and investigation and recorder staff.
 - (c) For this purpose, an appropriation of \$25,000 is made from the General Fund to the Judicial Council as a separate line item in the budget of the Judicial Council.
 - (d) Any amount of this appropriation remaining at the end of the fiscal year lapses into the General Fund.
- (2)
 - (a) When a grand jury is summoned to investigate an allegation that is determined to be primarily a county-related issue, the expenses of the grand jury shall be paid by the county or counties involved.
 - (b) The supervising judge shall determine before the grand jury is called if the allegations involve primarily the state or a county or counties for purposes of determining payment of expenses under this section.
- (3) The expenses of any grand jury and the compensation for any special prosecutor appointed under this chapter shall be reviewed and approved or disapproved by the clerk of the court under the direction of the managing judge.

Amended by Chapter 372, 1997 General Session