

GRAND JURY AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: _____

LONG TITLE

General Description:

This bill allows a presiding judge to call a grand jury at the request of a district attorney, county attorney, or the attorney general.

Highlighted Provisions:

This bill:

- ▶ gives a presiding judge more responsibility over the grand jury process by allowing a presiding judge to call a grand jury under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

77-10a-2, as last amended by Chapter 218, Laws of Utah 1994

78-3-29, as last amended by Chapter 171, Laws of Utah 1998

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

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

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 judge" means the judge who is elected to preside over a judicial district in accordance with Section 78-3-29.

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

~~[(4)]~~ (5) "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)]~~ (6) "Supervising judge" means the district court judge appointed by the presiding officer to supervise the five-judge grand jury panel.

~~[(6)]~~ (7) "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)]~~ (8) "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.

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

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 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 hold 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 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, 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, upon a determination of good cause, shall order a grand jury to be summoned.

(4) 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.

(5) If the attorney general, a county attorney, a district attorney, or a special prosecutor

appointed under Section 77-10a-12 certifies in writing to a presiding judge that in his judgment a grand jury is necessary because of criminal activity within the presiding judge's district, the presiding judge, upon a determination of good cause, may order a grand jury to be summoned within the district.

(a) The grand jury shall be drawn from within the district.

(b) The presiding judge may retain supervisory authority over the grand jury, or delegate that authority to another judge within the district.

Section 3. Section **78-3-29** is amended to read:

78-3-29. Presiding judge -- Associate presiding judge -- Election -- Term -- Compensation -- Powers -- Duties.

(1) In judicial districts having more than one judge, the district court judges shall elect one judge of the district to the office of presiding judge.

(2) In judicial districts having more than two judges, the district court judges may elect one judge of the district to the office of associate presiding judge.

(3) In districts having five or more full-time judges, court commissioners, referees, or hearing officers, the presiding judge shall receive an additional \$1,000 per annum as compensation.

(4) In districts having ten or more full-time judges, court commissioners, referees, or hearing officers, the associate presiding judge shall receive an additional \$1,000 per annum as compensation.

(5) The presiding judge has the following authority and responsibilities, consistent with the policies of the Judicial Council:

(a) implementing policies of the Judicial Council; and

(b) exercising powers and performing administrative duties as authorized by the Judicial Council.

(6) A presiding judge may call a grand jury within his own district in accordance with the provisions of Section 77-10a-2.

~~[(6)]~~ (7) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge.

Legislative Review Note

as of 1-5-06 1:06 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel