

GRAND JURY AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel R. Liljenquist

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill specifies instances when a grand jury may be called and adds municipal attorneys to the statute.

Highlighted Provisions:

This bill:

- ▶ specifies that a grand jury may be called when the subject of an investigation is:
 - an elected official;
 - a school board member; or
 - a candidate for office;
- ▶ specifies when a certification need not contain specific information; and
- ▶ adds municipal attorneys to the list of prosecutors.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

77-10a-12, as last amended by Laws of Utah 1993, Chapter 38



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

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

30 **77-10a-2. Panel of judges -- Appointment -- Membership -- Ordering of grand**
31 **jury.**

32 (1) (a) The presiding officer of the Judicial Council shall appoint a panel of five judges
33 from the district courts of the state to hear in secret all persons claiming to have information
34 that would justify the calling of a grand jury. The presiding officer may appoint senior status
35 district court judges to the panel. The presiding officer shall designate one member of the
36 panel as supervising judge to serve at the pleasure of the presiding officer. The panel has the
37 authority of the district court.

38 (b) To ensure geographical diversity on the panel one judge shall be appointed from the
39 first or second district for a five-year term, one judge shall be appointed from the third district
40 for a four-year term, one judge shall be appointed from the fourth district for a three-year term,
41 one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year
42 term, and one judge shall be appointed from the third district for a one-year term. Following
43 the first term, all terms on the panel are for five years.

44 (c) The panel shall hold hearings in each judicial district at least once every three years
45 and may meet at any location within the state. Three members of the panel constitute a quorum
46 for the transaction of panel business. The panel shall act by the concurrence of a majority of
47 members present and may act through the supervising judge or managing judge. The schedule
48 for the hearings shall be set by the panel and published by the Office of the Court
49 Administrator. Persons appearing before the panel shall be placed under oath and examined by
50 the judges conducting the hearings. Hearsay evidence may be presented at the hearings only
51 under the same provisions and limitations that apply to preliminary hearings.

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

54 (b) The panel may refer a matter to the attorney general, county attorney, district
55 attorney, or city attorney for investigation and prosecution. The referral shall contain as much
56 of the information presented to the panel as the panel determines relevant. The attorney
57 general, county attorney, district attorney, or city attorney shall report to the panel the results of
58 any investigation and whether the matter will be prosecuted by a prosecutor's information. The

59 report shall be filed with the panel within 120 days after the referral unless the panel provides
 60 for a different amount of time. If the panel is not satisfied with the action of the attorney
 61 general, county attorney, district attorney, or city attorney, the panel may order a grand jury to
 62 be summoned.

63 (3) When the attorney general, a county attorney, a district attorney, municipal
 64 attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the
 65 supervising judge that in his judgment a grand jury is necessary because of criminal activity in
 66 the state, the panel [~~upon a determination of good cause,~~] shall order a grand jury to be
 67 summoned[-: if the panel finds good cause exists ~~H→~~]; or if the subject of the investigation is:
 68 ~~—— (a) any elected official or judge of the state, county, or city;~~
 69 ~~—— (b) any member of a school board;~~
 70 ~~—— (c) a candidate for any office as described in this Subsection (3); or~~
 71 ~~—— (d) any person succeeding or appointed to fill a vacant office described in this~~
 72 ~~Subsection (3)~~ ~~←H~~ .

73 (4) In determining whether good cause exists under Subsection (3), the panel shall
 74 consider, among other factors, whether a grand jury is needed to help maintain public
 75 confidence in the impartiality of the criminal justice process.

76 (5) A written certification under Subsection (3) shall contain a statement that in the
 77 prosecutor's judgement a grand jury is necessary, but the certification need not contain any
 78 information which if disclosed may create a risk of:

- 79 (a) destruction or tainting of evidence;
- 80 (b) flight or other conduct by the subject of the investigation to avoid prosecution;
- 81 (c) damage to a person's reputation or privacy;
- 82 (d) harm to any person; or
- 83 (e) a serious impediment to the investigation.

84 (6) A written certification under Subsection (3) shall be accompanied by a statement of
 85 facts in support of the need for a grand jury.

86 (7) The supervising judge shall seal any written statement of facts submitted under
 87 Subsection (6).

88 [~~(4)~~] (8) The supervising judge may at the time the grand jury is summoned:

- 89 (a) order that it be drawn from the state at large as provided in this chapter or from any

90 district within the state; and

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

93 (9) If after the certification under Subsection (3) the panel does not order the
94 summoning of a grand jury or the grand jury does not return an indictment regarding the
95 subject matter of the certification, the prosecuting attorney may release to the public a copy of
96 the written certification if in the prosecutor's judgment the release does not create a risk as
97 described in Subsection (5).

98 Section 2. Section 77-10a-12 is amended to read:

99 **77-10a-12. Representation of state -- Appointment and compensation of special**
100 **prosecutor.**

101 (1) The state may be represented before any grand jury summoned in the state by:

102 (a) the attorney general [and his assistants,] or any assistant attorney general;

103 (b) a county attorney or any deputy county attorney;

104 (c) a district attorney [and his deputies, and] or any deputy district attorney;

105 (d) a municipal attorney or any deputy municipal attorney; and

106 (e) special prosecutors appointed under this chapter and their assistants.

107 (2) The supervising judge shall determine if a special prosecutor is necessary. [~~He may~~
108 ~~appoint a~~] A special prosecutor may be appointed only upon good cause shown and after
109 [making] the supervising judge makes a written finding that a conflict of interest exists in the
110 Office of the Attorney General [~~or~~], the office of the county attorney [~~or~~], district attorney, or
111 municipal attorney who would otherwise represent the state before the grand jury.

112 (3) In selecting a special prosecutor, the supervising judge shall give preference to the
113 attorney general and [~~his assistants, county attorney or district attorney and his~~] assistant
114 attorneys general, county attorneys, district attorneys, or municipal attorneys and their deputies.

115 (4) (a) The compensation of a special prosecutor appointed under this chapter who is
116 an employee of the Office of the Attorney General [~~or~~], the office of a county attorney [~~or~~],
117 district attorney, or municipal attorney is only the current compensation [~~he receives~~] received
118 in that office.

119 (b) The compensation for an appointed special prosecutor who is not an employee of a
120 prosecutorial office under Subsection (4)(a) shall be comparable to the compensation of a

121 deputy or assistant attorney general having similar experience to that of the special prosecutor.
122 (5) The attorney general, county attorney, district attorney, or municipal attorney may
123 elect to have a special prosecutor appointed by the supervising judge at the expense of the
124 governmental entity supporting the electing prosecutor. Upon receipt of written notice from
125 the prosecutor of that election, the supervising judge shall appoint a special prosecutor in
126 accordance with this section. The electing prosecutor's supporting governmental entity shall
127 reimburse the state for expenses incurred in appointment and compensation of the special
128 prosecutor.

Legislative Review Note
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Office of Legislative Research and General Counsel