

30 information that would justify the calling of a grand jury. The presiding officer may appoint
31 senior status district court judges to the panel. The presiding officer shall designate one
32 member of the panel as supervising judge to serve at the pleasure of the presiding officer. The
33 panel has the authority of the district court.

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

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

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

50 (b) The panel may refer a matter to the attorney general, county attorney, district
51 attorney, or city attorney for investigation and prosecution. The referral shall contain as much
52 of the information presented to the panel as the panel determines relevant. The attorney
53 general, county attorney, district attorney, or city attorney shall report to the panel the results
54 of any investigation and whether the matter will be prosecuted by a prosecutor's information.
55 The report shall be filed with the panel within 120 days after the referral unless the panel
56 provides for a different amount of time. If the panel is not satisfied with the action of the
57 attorney general, county attorney, district attorney, or city attorney, the panel may order a

58 grand jury to be summoned.

59 (3) When the attorney general, a county attorney, a district attorney, municipal
60 attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the
61 supervising judge that in his judgment a grand jury is necessary because of criminal activity in
62 the state, the panel[~~, upon a determination of good cause,~~] shall order a grand jury to be
63 summoned if the panel finds good cause exists.

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

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

- 70 (a) destruction or tainting of evidence;
- 71 (b) flight or other conduct by the subject of the investigation to avoid prosecution;
- 72 (c) damage to a person's reputation or privacy;
- 73 (d) harm to any person; or
- 74 (e) a serious impediment to the investigation.

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

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

79 [~~4~~] (8) The supervising judge may at the time the grand jury is summoned:

80 (a) order that it be drawn from the state at large as provided in this chapter or from any
81 district within the state; and

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

84 (9) If after the certification under Subsection (3) the panel does not order the
85 summoning of a grand jury or the grand jury does not return an indictment regarding the

86 subject matter of the certification, the prosecuting attorney may release to the public a copy of
87 the written certification if in the prosecutor's judgment the release does not create a risk as
88 described in Subsection (5).

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

90 **77-10a-12. Representation of state -- Appointment and compensation of special**
91 **prosecutor.**

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

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

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

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

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

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

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

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

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

111 (b) The compensation for an appointed special prosecutor who is not an employee of a
112 prosecutorial office under Subsection (4)(a) shall be comparable to the compensation of a
113 deputy or assistant attorney general having similar experience to that of the special prosecutor.

114 (5) The attorney general, county attorney, district attorney, or municipal attorney may
115 elect to have a special prosecutor appointed by the supervising judge at the expense of the
116 governmental entity supporting the electing prosecutor. Upon receipt of written notice from
117 the prosecutor of that election, the supervising judge shall appoint a special prosecutor in
118 accordance with this section. The electing prosecutor's supporting governmental entity shall
119 reimburse the state for expenses incurred in appointment and compensation of the special
120 prosecutor.