

**Representative Kay L. McIff** proposes the following substitute bill:

**GRAND JURY AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John L. Valentine**

House Sponsor: Kay L. McIff

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**LONG TITLE**

**General Description:**

This bill amends the provision regarding written requests for a grand jury.

**Highlighted Provisions:**

This bill:

- ▶ provides that a written certification requesting a grand jury may be submitted to the supervising judge of a grand jury panel at any time; and

- ▶ provides that a grand jury panel shall consider a written certification requesting a grand jury within a reasonable time.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides revisor instructions for a future effective date for Section 77-10a-2.

**Utah Code Sections Affected:**

AMENDS:

**77-10a-2**, as last amended by Laws of Utah 2010, Chapters 34 and 96

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

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



26           **77-10a-2. Panel of judges -- Appointment -- Membership -- Ordering of grand**  
27 **jury.**

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

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

40           (c) The panel shall schedule hearings in each judicial district at least once every three  
41 years 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 Court  
45 Administrator. Persons who desire to appear before the panel shall schedule an appointment  
46 with the Office of the Court Administrator at least 10 days in advance. If no appointments are  
47 scheduled, the hearing may be canceled. Persons appearing before the panel shall be placed  
48 under oath and examined by the judges conducting the hearings. Hearsay evidence may be  
49 presented at the hearings only under the same provisions and limitations that apply to  
50 preliminary hearings.

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

53           (b) The panel may refer a matter to the attorney general, county attorney, district  
54 attorney, or city attorney for investigation and prosecution. The referral shall contain as much  
55 of the information presented to the panel as the panel determines relevant. The attorney  
56 general, county attorney, district attorney, or city attorney shall report to the panel the results of

57 any investigation and whether the matter will be prosecuted by a prosecutor's information. The  
58 report shall be filed with the panel within 120 days after the referral unless the panel provides  
59 for a different amount of time. If the panel is not satisfied with the action of the attorney  
60 general, county attorney, district attorney, or city attorney, the panel may order a grand jury to  
61 be summoned.

62 (3) When the attorney general, a county attorney, a district attorney, municipal  
63 attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the  
64 supervising judge that in his judgment a grand jury is necessary because of criminal activity in  
65 the state, the panel shall order a grand jury to be summoned [if] unless the panel finds good  
66 cause [~~exists~~] does not exist.

67 (4) In determining [~~whether~~] good cause [~~exists~~] under Subsection (3), the panel shall  
68 consider, among other factors, whether a grand jury is needed to help maintain public  
69 confidence in the impartiality of the criminal justice process. A written certification under  
70 Subsection (3) may be submitted to the supervising judge at any time. The panel shall consider  
71 the certification within a reasonable time.

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

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

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

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

84 (8) The supervising judge may at the time the grand jury is summoned:

- 85 (a) order that it be drawn from the state at large as provided in this chapter or from any  
86 district within the state; and
- 87 (b) retain authority to supervise the grand jury or delegate the supervision of the grand

88 jury to any judge of any district court within the state.

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

94 Section 2. **Revisor instructions to create a future version of Section 77-10a-2.**

95 It is the intent of the Legislature that, in preparing the Utah Code database for  
96 publication, the Office of Legislative Research and General Counsel shall prepare a future  
97 version of Section 77-10a-2, to take effect on July 1, 2016, that reads as follows:

98 **"77-10a-2. Panel of judges -- Appointment -- Membership -- Ordering of grand**  
99 **jury.**

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

106 (b) To ensure geographical diversity on the panel one judge shall be appointed from the  
107 first or second district for a five-year term, one judge shall be appointed from the third district  
108 for a four-year term, one judge shall be appointed from the fourth district for a three-year term,  
109 one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year  
110 term, and one judge shall be appointed from the third district for a one-year term. Following  
111 the first term, all terms on the panel are for five years.

112 (c) The panel shall schedule hearings in each judicial district at least once every three  
113 years and may meet at any location within the state. Three members of the panel constitute a  
114 quorum for the transaction of panel business. The panel shall act by the concurrence of a  
115 majority of members present and may act through the supervising judge or managing judge.  
116 The schedule for the hearings shall be set by the panel and published by the Office of the Court  
117 Administrator. Persons who desire to appear before the panel shall schedule an appointment  
118 with the Office of the Court Administrator at least 10 days in advance. If no appointments are

119 scheduled, the hearing may be canceled. Persons appearing before the panel shall be placed  
120 under oath and examined by the judges conducting the hearings. Hearsay evidence may be  
121 presented at the hearings only under the same provisions and limitations that apply to  
122 preliminary hearings.

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

125 (b) The panel may refer a matter to the attorney general, county attorney, district  
126 attorney, or city attorney for investigation and prosecution. The referral shall contain as much  
127 of the information presented to the panel as the panel determines relevant. The attorney  
128 general, county attorney, district attorney, or city attorney shall report to the panel the results of  
129 any investigation and whether the matter will be prosecuted by a prosecutor's information. The  
130 report shall be filed with the panel within 120 days after the referral unless the panel provides  
131 for a different amount of time. If the panel is not satisfied with the action of the attorney  
132 general, county attorney, district attorney, or city attorney, the panel may order a grand jury to  
133 be summoned.

134 (3) When the attorney general, a county attorney, a district attorney, municipal  
135 attorney, or a special prosecutor appointed under Section 77-10a-12 certifies in writing to the  
136 supervising judge that in his judgment a grand jury is necessary because of criminal activity in  
137 the state, the panel shall order a grand jury to be summoned if the panel finds good cause  
138 exists.

139 (4) In determining [~~whether~~] good cause [~~exists~~] under Subsection (3), the panel shall  
140 consider, among other factors, whether a grand jury is needed to help maintain public  
141 confidence in the impartiality of the criminal justice process. A written certification under  
142 Subsection (3) may be submitted to the supervising judge at any time. The panel shall consider  
143 the certification within a reasonable time.

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

- 147 (a) destruction or tainting of evidence;  
148 (b) flight or other conduct by the subject of the investigation to avoid prosecution;  
149 (c) damage to a person's reputation or privacy;

- 150 (d) harm to any person; or  
151 (e) a serious impediment to the investigation.  
152 (6) A written certification under Subsection (3) shall be accompanied by a statement of  
153 facts in support of the need for a grand jury.  
154 (7) The supervising judge shall seal any written statement of facts submitted under  
155 Subsection (6).  
156 (8) The supervising judge may at the time the grand jury is summoned:  
157 (a) order that it be drawn from the state at large as provided in this chapter or from any  
158 district within the state; and  
159 (b) retain authority to supervise the grand jury or delegate the supervision of the grand  
160 jury to any judge of any district court within the state.  
161 (9) If after the certification under Subsection (3) the panel does not order the  
162 summoning of a grand jury or the grand jury does not return an indictment regarding the  
163 subject matter of the certification, the prosecuting attorney may release to the public a copy of  
164 the written certification if in the prosecutor's judgment the release does not create a risk as  
165 described in Subsection (5)."