

**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 subpoenaing witnesses and 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;
- ▶ provides that a grand jury panel shall consider a written certification requesting a grand jury within a reasonable time; and
- ▶ requires that a minor who is a victim of a crime be given 72 hours notice before being required to testify.

**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



26 77-10a-13, as last amended by Laws of Utah 1997, Chapter 372



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 schedule hearings in each judicial district at least once every three  
45 years and may meet at any location within the state. Three members of the panel constitute a  
46 quorum for the transaction of panel business. The panel shall act by the concurrence of a  
47 majority of members present and may act through the supervising judge or managing judge.  
48 The schedule for the hearings shall be set by the panel and published by the Office of the Court  
49 Administrator. Persons who desire to appear before the panel shall schedule an appointment  
50 with the Office of the Court Administrator at least 10 days in advance. If no appointments are  
51 scheduled, the hearing may be canceled. Persons appearing before the panel shall be placed  
52 under oath and examined by the judges conducting the hearings. Hearsay evidence may be  
53 presented at the hearings only under the same provisions and limitations that apply to  
54 preliminary hearings.

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

57 (b) The panel may refer a matter to the attorney general, county attorney, district  
58 attorney, or city attorney for investigation and prosecution. The referral shall contain as much  
59 of the information presented to the panel as the panel determines relevant. The attorney  
60 general, county attorney, district attorney, or city attorney shall report to the panel the results of  
61 any investigation and whether the matter will be prosecuted by a prosecutor's information. The  
62 report shall be filed with the panel within 120 days after the referral unless the panel provides  
63 for a different amount of time. If the panel is not satisfied with the action of the attorney  
64 general, county attorney, district attorney, or city attorney, the panel may order a grand jury to  
65 be summoned.

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

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

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 (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-13 is amended to read:

99 **77-10a-13. Location -- Who may be present -- Witnesses -- Witnesses who are**  
100 **subjects -- Evidence -- Contempt -- Notice -- Record of proceedings -- Disclosure.**

101 (1) The managing judge shall designate the place where the grand jury meets. The  
102 grand jury may, upon request and with the permission of the managing judge, meet and conduct  
103 business any place within the state. Subject to the approval of the managing judge the grand  
104 jury shall determine the times at which it meets.

105 (2) (a) Attorneys representing the state, special prosecutors appointed under Section  
106 77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and  
107 a court reporter or operator of a recording device to record the proceedings may be present  
108 while the grand jury is in session.

109 (b) No person other than the jurors may be present while the grand jury is deliberating.

110 (3) (a) The attorneys representing the state and the special prosecutors may subpoena  
111 witnesses to appear before the grand jury and may subpoena evidence in the name of the grand  
112 jury without the prior approval or consent of the grand jury or the court. The jury may request  
113 that other witnesses or evidence be subpoenaed.

114 (b) Subpoenas may be issued in the name of the grand jury to any person located within  
115 the state and for any evidence located within the state or as otherwise provided by law.

116 (c) Except as provided in Subsection (3)(d), a subpoena requiring a minor, who is a  
117 victim of a crime, to testify before a grand jury may not be served less than 72 hours before the  
118 minor is required to testify.

119 (d) A subpoena may be served upon a minor less than 72 hours before the minor is  
120 required to testify if the managing judge finds that the minor was intentionally concealed to  
121 prevent service or that a shorter period is reasonably necessary to prevent:

122 (i) a risk to the minor's safety;

123 (ii) the concealment or removal of the minor from the jurisdiction;

124 (iii) intimidation or coercion of the minor or a family member of the minor; or

125 (iv) undue influence on the minor regarding the minor's testimony.

126 (e) The service requirement in Subsection (3)(c) may be asserted only by or on behalf  
127 of the minor and is not a basis for invalidation of the minor's testimony or any indictment  
128 issued by the grand jury.

129 [~~(e)~~] (f) The managing judge may enter any order necessary to secure compliance with  
130 any subpoena issued in the name of the grand jury.

131 (4) (a) Any witness who appears before the grand jury shall be advised, by the attorney  
132 for the state or the special prosecutor, of his right to be represented by counsel.

133 (b) A witness who is also a subject as defined in Section 77-10a-1 shall at the time he  
134 appears as a witness be advised:

135 (i) of his right to be represented by counsel;

136 (ii) that he is a subject;

137 (iii) that he may claim his privilege against self-incrimination; and

138 (iv) of the general scope of the grand jury's investigation.

139 (c) A witness who is also a target as defined in Section 77-10a-1 shall at the time he  
140 appears as a witness, be advised:

141 (i) of his right to be represented by counsel;

142 (ii) that he is a target;

143 (iii) that he may claim his privilege against self-incrimination;

144 (iv) that the attorney for the state, the special prosecutor, or the grand jury is in  
145 possession of substantial evidence linking him to the commission of a crime for which he could  
146 be charged; and

147 (v) of the general nature of that charge and of the evidence that would support the  
148 charge.

149 (d) This subsection does not require the attorney for the state, the special prosecutor, or

150 the grand jury to disclose to any subject or target the names or identities of witnesses, sources  
151 of information, or informants, or disclose information in detail or in a fashion that would  
152 jeopardize or compromise any ongoing criminal investigation or endanger any person or the  
153 community.

154 (5) (a) The grand jury shall receive evidence without regard for the formal rules of  
155 evidence, except the grand jury may receive hearsay evidence only under the same provisions  
156 and limitations that apply to preliminary hearings.

157 (b) Any person, including a witness who has previously testified or produced books,  
158 records, documents, or other evidence, may present exculpatory evidence to the attorney  
159 representing the state or the special prosecutor and request that it be presented to the grand  
160 jury, or request to appear personally before the grand jury to testify or present evidence to that  
161 body. The attorney for the state or the special prosecutor shall forward the request to the grand  
162 jury.

163 (c) When the attorney for the state or the special prosecutor is personally aware of  
164 substantial and competent evidence negating the guilt of a subject or target that might  
165 reasonably be expected to lead the grand jury not to indict, he shall present or otherwise  
166 disclose the evidence to the grand jury before the grand jury is asked to indict that person.

167 (6) (a) The managing judge has the contempt power and authority inherent in the court  
168 over which he presides and as provided by statute.

169 (b) When a witness in any proceeding before or ancillary to any grand jury appearance  
170 refuses to comply with an order from the managing judge to testify or provide other  
171 information, including any book, paper, document, record, recording, or other material without  
172 having a recognized privilege, the attorney for the state or special prosecutor may apply to the  
173 managing judge for an order directing the witness to show cause why he should not be held in  
174 contempt.

175 (c) After submission of the application and a hearing at which the witness is entitled to  
176 be represented by counsel, the managing judge may hold the witness in contempt and order that  
177 he be confined, upon a finding that the refusal was not privileged.

178 (d) A hearing may not be held under this part unless 72 hours notice is given to the  
179 witness who has refused to comply with the order to testify or provide other information,  
180 except a witness may be given a shorter notice if the managing judge upon a showing of special

181 need so orders.

182 (e) Any confinement for refusal to comply with an order to testify or produce other  
183 information shall continue until the witness is willing to give the testimony or provide the  
184 information. A period of confinement may not exceed the term of the grand jury, including  
185 extensions, before which the refusal to comply with the order occurred. In any event the  
186 confinement may not exceed one year.

187 (f) A person confined under this subsection for refusal to testify or provide other  
188 information concerning any transaction, set of transactions, event, or events may not be again  
189 confined under this subsection or for criminal contempt for a subsequent refusal to testify or  
190 provide other information concerning the same transaction, set of transactions, event, or events.

191 (g) Any person confined under this section may be admitted to bail or released in  
192 accordance with local procedures pending the determination of an appeal taken by him from  
193 the order of his confinement unless the appeal affirmatively appears to be frivolous or taken for  
194 delay. Any appeal from an order of confinement under this section shall be disposed of as soon  
195 as practicable, pursuant to an expedited schedule and in no event more than 30 days from the  
196 filing of the appeal.

197 (7) (a) All proceedings, except when the grand jury is deliberating or voting, shall be  
198 recorded stenographically or by an electronic recording device. An unintentional failure of any  
199 recording to reproduce all or any portion of a proceeding does not affect the validity of any  
200 prosecution or indictment. The recording or reporter's notes or any transcript prepared from  
201 them shall remain in the custody or control of the attorney for the state or the special prosecutor  
202 unless otherwise ordered by the managing judge in a particular case.

203 (b) A grand juror, an interpreter, a court reporter, an operator of a recording device, a  
204 typist who transcribes recorded testimony, an attorney for the state or special prosecutor, or any  
205 person to whom disclosure is made under the provisions of this section may not disclose  
206 matters occurring before the grand jury except as otherwise provided in this section. A  
207 knowing violation of this provision may be punished as a contempt of court.

208 (c) Disclosure otherwise prohibited by this section of matters occurring before the  
209 grand jury, other than its deliberations and the vote of any grand juror, may be made to:

210 (i) an attorney for the state or a special prosecutor for use in the performance of that  
211 attorney's duty; and

212 (ii) government personnel, including those of state, local, and federal entities and  
213 agencies, as are considered necessary by the attorney for the state or special prosecutor to assist  
214 him in the performance of his duty to enforce the state's criminal laws.

215 (d) Any person to whom matters are disclosed under this section may not utilize that  
216 grand jury material for any purpose other than assisting the attorney for the state or the special  
217 prosecutor in performance of that attorney's duty to enforce the state's criminal laws. An  
218 attorney for the state or the special prosecutor shall promptly provide the managing judge with  
219 the names of the persons to whom the disclosure has been made and shall certify that the  
220 attorney has advised the person of his obligation of secrecy under this section.

221 (e) Disclosure otherwise prohibited by this section of matters occurring before the  
222 grand jury may also be made when:

223 (i) directed by the managing judge or by any court before which the indictment that  
224 involves matters occurring before the grand jury that are subject to disclosure is to be tried,  
225 preliminary to or in connection with a judicial proceeding;

226 (ii) permitted by the managing judge at the request of the defendant, upon a showing  
227 that grounds may exist for a motion to dismiss the indictment because of matters occurring  
228 before the grand jury;

229 (iii) the disclosure is made by an attorney for the state or the special prosecutor to  
230 another state or local grand jury or a federal grand jury;

231 (iv) permitted by the managing judge at the request of an attorney for the state or the  
232 special prosecutor, upon a showing that the matters may disclose a violation of federal criminal  
233 law, to an appropriate official of the federal government for the purpose of enforcing federal  
234 law; or

235 (v) showing of special need is made and the managing judge is satisfied that disclosure  
236 of the information or matters is essential for the preparation of a defense.

237 (f) When the matters are transcripts of testimony given by witnesses, the state or  
238 special prosecutor intends to call in the state's case in chief in any trial upon an indictment  
239 returned by the grand jury before which the witnesses testified, the attorney for the state or the  
240 special prosecutor shall, no later than 30 days before trial, provide the defendant with access to  
241 the transcripts. The attorney for the state or the special prosecutor shall at the same time  
242 provide the defendant with access to all exculpatory evidence presented to the grand jury prior



243 to indictment.

244 (g) When the managing judge orders disclosure of matters occurring before the grand  
245 jury, disclosure shall be made in a manner, at a time, and under conditions the managing judge  
246 directs.

247 (h) A petition for disclosure made under Subsection (7)(e)(ii) shall be filed with the  
248 managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon  
249 the attorney for the state or the special prosecutor, the parties to the judicial proceeding if  
250 disclosure is sought in connection with the proceeding, and other persons as the managing  
251 judge directs. The managing judge shall afford those persons a reasonable opportunity to  
252 appear and be heard.

253 (8) Records, orders, and subpoenas relating to grand jury proceedings shall be kept  
254 under seal to the extent and so long as necessary to prevent disclosure of matters occurring  
255 before the grand jury other than as provided in this section.

256 (9) Subject to any right to an open hearing in contempt proceedings, the managing  
257 judge shall order a hearing on matters affecting a grand jury proceeding to be closed to the  
258 extent necessary to prevent disclosure of matters occurring before a grand jury.

259 **Section 3. Revisor instructions to create a future version of Section 77-10a-2.**

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

263 **"77-10a-2. Panel of judges -- Appointment -- Membership -- Ordering of grand**  
264 **jury.**

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

271 (b) To ensure geographical diversity on the panel one judge shall be appointed from the  
272 first or second district for a five-year term, one judge shall be appointed from the third district  
273 for a four-year term, one judge shall be appointed from the fourth district for a three-year term,

274 one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year  
275 term, and one judge shall be appointed from the third district for a one-year term. Following  
276 the first term, all terms on the panel are for five years.

277 (c) The panel shall schedule hearings in each judicial district at least once every three  
278 years and may meet at any location within the state. Three members of the panel constitute a  
279 quorum for the transaction of panel business. The panel shall act by the concurrence of a  
280 majority of members present and may act through the supervising judge or managing judge.  
281 The schedule for the hearings shall be set by the panel and published by the Office of the Court  
282 Administrator. Persons who desire to appear before the panel shall schedule an appointment  
283 with the Office of the Court Administrator at least 10 days in advance. If no appointments are  
284 scheduled, the hearing may be canceled. Persons appearing before the panel shall be placed  
285 under oath and examined by the judges conducting the hearings. Hearsay evidence may be  
286 presented at the hearings only under the same provisions and limitations that apply to  
287 preliminary hearings.

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

290 (b) The panel may refer a matter to the attorney general, county attorney, district  
291 attorney, or city attorney for investigation and prosecution. The referral shall contain as much  
292 of the information presented to the panel as the panel determines relevant. The attorney  
293 general, county attorney, district attorney, or city attorney shall report to the panel the results of  
294 any investigation and whether the matter will be prosecuted by a prosecutor's information. The  
295 report shall be filed with the panel within 120 days after the referral unless the panel provides  
296 for a different amount of time. If the panel is not satisfied with the action of the attorney  
297 general, county attorney, district attorney, or city attorney, the panel may order a grand jury to  
298 be summoned.

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

304 (4) In determining [~~whether~~] good cause [~~exists~~] under Subsection (3), the panel shall

305 consider, among other factors, whether a grand jury is needed to help maintain public  
306 confidence in the impartiality of the criminal justice process. A written certification under  
307 Subsection (3) may be submitted to the supervising judge at any time. The panel shall consider  
308 the certification within a reasonable time.

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

- 312 (a) destruction or tainting of evidence;
- 313 (b) flight or other conduct by the subject of the investigation to avoid prosecution;
- 314 (c) damage to a person's reputation or privacy;
- 315 (d) harm to any person; or
- 316 (e) a serious impediment to the investigation.

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

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

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

- 322 (a) order that it be drawn from the state at large as provided in this chapter or from any  
323 district within the state; and
- 324 (b) retain authority to supervise the grand jury or delegate the supervision of the grand  
325 jury to any judge of any district court within the state.

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

