

As Further Amended by House Committee

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Session of 2013

HOUSE BILL No. 2182

By Committee on Judiciary

1-31

1 AN ACT concerning crimes, punishment, and criminal procedure; relating
2 to grand juries; amending K.S.A. 22-3002 and 22-3006 and K.S.A.
3 2012 Supp. 22-3001, 22-3008 and 43-107 and repealing the existing
4 sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2012 Supp. 22-3001 is hereby amended to read as
8 follows: 22-3001. (a) A majority of the district judges in any judicial
9 district may order a grand jury to be summoned in any county in the
10 district when it is determined to be in the public interest.

11 (b) The district or county attorney in such attorney's county may
12 petition the chief judge or the chief judge's designee in such district court
13 to order a grand jury to be summoned in the designated county in the
14 district to investigate alleged violations of an off-grid felony, a severity
15 level 1, 2, 3 or 4 felony or a drug severity level 1 or 2 felony. The chief
16 judge or the chief judge's designee in the district court of the county shall
17 then consider the petition and, if it is found that the petition is in proper
18 form, as set forth in this subsection, shall order a grand jury to be
19 summoned.

20 (c) (1) A grand jury shall be summoned in any county within 60 days
21 after a petition praying therefor is presented to the district court, bearing
22 the signatures of a number of electors equal to 100 plus 2% of the total
23 number of votes cast for governor in the county in the last preceding
24 election.

25 (2) *The petition, upon its face, shall state **the name, address and***
26 **phone number of the person filing the petition, the subject matter of the**
27 *prospective grand jury, a reasonably specific identification of areas to be*
28 *inquired into and sufficient general allegations to warrant a finding that*
29 *such inquiry may lead to information which, if true, would warrant a true*
30 *bill of indictment.*

31 (3) The petition shall be in substantially the following form:

32 The undersigned qualified electors of the county of _____
33 and state of Kansas hereby request that the district court of
34 _____ county, Kansas, within 60 days after the filing of this

1 petition, cause a grand jury to be summoned in the county to investigate
2 alleged violations of law and to perform such other duties as may be
3 authorized by law.

4 The signatures to the petition need not all be affixed to one paper, but
5 each paper to which signatures are affixed shall have substantially the
6 foregoing form written or printed at the top thereof. Each signer shall add
7 to such signer's signature such signer's place of residence, giving the street
8 and number or rural route number, if any. One of the signers of each paper
9 shall verify upon oath that each signature appearing on the paper is the
10 genuine signature of the person whose name it purports to be and that such
11 signer believes that the statements in the petition are true. The petition
12 shall be filed in the office of the clerk of the district court who shall
13 forthwith transmit it to the county election officer, who shall determine
14 whether the persons whose signatures are affixed to the petition are
15 qualified electors of the county. Thereupon, the county election officer
16 shall return the petition to the clerk of the district court, together with such
17 election officer's certificate stating the number of qualified electors of the
18 county whose signatures appear on the petition and the aggregate number
19 of votes cast for all candidates for governor in the county in the last
20 preceding election. The judge or judges of the district court of the county
21 shall then consider the petition and, if it is found that the petition is in
22 proper form and bears the signatures of the required number of electors, a
23 grand jury shall be ordered to be summoned.

24 **(4) After a grand jury is summoned pursuant to this subsection,**
25 **but before it begins deliberations, the judge or judges of the district**
26 **court of the county in which the petition is presented shall provide**
27 **instructions to the grand jury regarding its conduct and deliberations,**
28 **which instructions shall include, but not be limited to, the following:**

29 **(A) You have been impaneled as a grand jury pursuant to a**
30 **citizens' petition filed in this court, signed by (insert number) qualified**
31 **electors of this county, stating (insert the subject matter described in**
32 **the petition, including a reasonably specific identification of the areas**
33 **to be inquired into and the allegations sufficient to warrant a finding**
34 **that the grand jury's inquiry may lead to information which, if true,**
35 **would warrant a true bill of indictment.) You are charged with**
36 **making inquiry with regard to this subject matter and determining**
37 **whether the facts support allegations warranting a true bill of**
38 **indictment.**

39 **(B) The person filing the citizens' petition filed in this court must**
40 **be the first witness you call for the purpose of presenting evidence and**
41 **testimony as to the subject matter and allegations of the petition.**

42 **(C) You may, with the approval of this court, employ special**
43 **counsel and investigators, and incur such other expense for services**

1 and supplies as you and this court deem necessary. Any special counsel
2 or investigator you employ shall be selected by a majority vote of your
3 grand jury. You may make such selection only after hearing testimony
4 from the person who filed the citizens' petition. You may utilize the
5 services of any special counsel or investigator you employ instead of,
6 or in addition to, the services of the prosecuting attorney.

7 (D) If any witness duly summoned to appear and testify before
8 you fails or refuses to obey, compulsory process will be issued by this
9 court to enforce the witness' attendance.

10 (E) If any witness appearing before you refuses to testify or to
11 answer any questions asked in the course of the witness' examination,
12 you shall communicate that fact to this court in writing, together with
13 a statement regarding the question the witness refuses to answer. This
14 court will determine and inform you of whether the witness is bound
15 to answer or not. However, no witness appearing before you can be
16 compelled to make any statement which will incriminate such witness.

17 (F) Any person may file a written request with the prosecuting
18 attorney or with the foreman of the grand jury and request to testify
19 or retestify in an inquiry before a grand jury or to appear before a
20 grand jury. Any written request shall include a summary of such
21 person's written testimony.

22 (G) At the conclusion of your inquiry and determination, you will
23 return either a no bill of indictment or a true bill of indictment.

24 (d) The grand jury shall consist of 15 members and shall be drawn
25 and summoned in the same manner as petit jurors for the district court.
26 Twelve members thereof shall constitute a quorum. The judge or judges
27 ordering the grand jury shall direct that a sufficient number of legally
28 qualified persons be summoned for service as grand jurors.

29 Sec. 2. K.S.A. 22-3002 is hereby amended to read as follows: 22-
30 3002. (1) The prosecuting attorney may challenge the array of jurors on
31 the ground that the grand jury was not selected, drawn or summoned in
32 accordance with law, and may challenge an individual juror on the ground
33 that the juror is not legally qualified. Challenges by the state shall be made
34 before the administration of the oath to the jurors and shall be tried by the
35 court.

36 (2) A motion to dismiss the indictment made by the defendant may be
37 based on objections to the array or on the lack of legal qualification of an
38 individual juror. An indictment shall not be dismissed on the ground that
39 one or more members of the grand jury were not legally qualified if it
40 appears from the record kept pursuant to K.S.A. 22-3004 that 12 or more
41 jurors, after deducting the jurors not legally qualified, concurred in finding
42 the indictment.

43 (3) *After the prosecutor has conducted an examination of the*

1 *prospective grand jurors under this section, a list of all remaining legally*
2 *qualified grand jurors shall be approved by the court and submitted to the*
3 *clerk of the county of such court for a second drawing of grand juror*
4 *names pursuant to K.S.A. 43-107, and amendments thereto.*

5 Sec. 3. K.S.A. 22-3006 is hereby amended to read as follows: 22-
6 3006. (1) Persons summoned for service as grand jurors shall be
7 compensated for their service and expenses at the rates provided by law
8 for the compensation of petit jurors in the district court. Such
9 compensation shall be paid from the general fund of the county.

10 (2) The grand jury shall employ a certified shorthand reporter who
11 shall make a stenographic record of all testimony and other proceedings
12 before the grand jury. The compensation of the reporter shall be fixed by
13 the district court and paid from the general fund of the county.

14 (3) The grand jury may, with the approval of the district court,
15 employ special counsel, investigators, and incur such other expense for
16 services and supplies as it and the court may deem necessary.
17 Compensation for such services and supplies shall be fixed by the district
18 court and shall be paid from the general fund of the county. *Any special*
19 *counsel or investigator employed by the grand jury shall be selected by*
20 *majority vote of such grand jury only after hearing testimony from the*
21 *person filing the petition pursuant to K.S.A. 2012 Supp. 22-3001, and*
22 *amendments thereto. Subject to the provisions of this section, the grand*
23 *jury shall have all authority to investigate any concerns associated with*
24 *such petition.*

25 Sec. 4. K.S.A. 2012 Supp. 22-3008 is hereby amended to read as
26 follows: 22-3008. (1) Whenever required by any grand jury, its presiding
27 juror or the prosecuting attorney, the clerk of the court in which the jury is
28 impaneled shall issue subpoenas and other process to bring witnesses to
29 testify before the grand jury. *The person who filed the petition pursuant to*
30 *K.S.A. 2012 Supp. 22-3001, and amendments thereto, shall be the first*
31 *witness called by the grand jury for the purpose of presenting evidence*
32 *and testimony as to the subject matter and allegations of the petition.*

33 (2) If any witness duly summoned to appear and testify before a
34 grand jury fails or refuses to obey, compulsory process shall be issued to
35 enforce the witness' attendance, and the court may punish the delinquent in
36 the same manner and upon the same proceedings as provided by law for
37 disobedience of a subpoena issued out of the court in other cases.

38 (3) If any witness appearing before a grand jury refuses to testify or
39 to answer any questions asked in the course of the witness' examination,
40 the fact shall be communicated to a district judge of the judicial district in
41 writing, on which the question refused to be answered shall be stated. The
42 judge shall then determine whether the witness is bound to answer or not,
43 and the grand jury shall be immediately informed of the decision.

1 (4) No witness before a grand jury shall be required to incriminate the
2 witness' self.

3 (5) (a) The county or district attorney, or the attorney general, at any
4 time, on behalf of the state, and the district judge, upon determination that
5 the interest of justice requires, and after giving notice to the prosecuting
6 attorney and hearing the prosecuting attorney's recommendations on the
7 matter, may grant in writing to any person:

8 (i) Transactional immunity. Any person granted transactional
9 immunity shall not be prosecuted for any crime which has been committed
10 for which such immunity is granted or for any other transactions arising
11 out of the same incident.

12 (ii) Use and derivative immunity. Any person granted use and
13 derivative use immunity may be prosecuted for any crime, but the state
14 shall not use any testimony against such person provided under a grant of
15 such immunity or any evidence derived from such testimony. Any
16 defendant may file with the court a motion to suppress in writing to
17 prevent the state from using evidence on the grounds that the evidence was
18 derived from and obtained against the defendant as a result of testimony or
19 statements made under such grant of immunity. The motion shall state
20 facts supporting the allegations. Upon a hearing on such motion, the state
21 shall have the burden to prove by clear and convincing evidence that the
22 evidence was obtained independently and from a collateral source.

23 (b) Any person granted immunity under either or both of subsections
24 (5)(a)(i) or (ii) may not refuse to testify on grounds that such testimony
25 may self incriminate unless such testimony may form the basis for a
26 violation of federal law for which immunity under federal law has not
27 been conferred. No person shall be compelled to testify in any proceeding
28 where the person is a defendant.

29 (c) No immunity shall be granted for perjury as provided in K.S.A.
30 2012 Supp. 21-5903, and amendments thereto, which was committed in
31 giving such evidence.

32 (6) If the judge determines that the witness must answer and if the
33 witness persists in refusing to answer, the witness shall be brought before
34 the judge, who shall proceed in the same manner as if the witness had been
35 interrogated and had refused to answer in open court.

36 ~~(7) Any person may approach the prosecuting attorney or the grand
37 jury and request to testify or retestify in an inquiry before a grand jury or
38 to appear before a grand jury. The prosecuting attorney or the grand jury
39 shall keep a record of all denials of such requests to that prosecuting
40 attorney or grand jury, including the reasons for not allowing such person
41 to testify or appear. If the person making such request is dissatisfied with
42 the decision of the prosecuting attorney or the grand jury, such person
43 may petition the court for hearing on the denial by the prosecuting~~

1 *attorney or the grand jury. If the court grants the hearing, then the court*
2 *may permit the person to testify or appear before the grand jury, if the*
3 *court finds that such testimony or appearance would serve the interests of*
4 *justice.*

5 **(7) Any person may file a written request with the prosecuting**
6 **attorney or with the foreman of the grand jury and request to testify**
7 **or retestify in an inquiry before a grand jury or to appear before a**
8 **grand jury. Any written request shall include a summary of such**
9 **person's written testimony.**

10 Sec. 5. K.S.A. 2012 Supp. 43-107 is hereby amended to read as
11 follows: 43-107. (a) At least 30 days before service is required, the clerk
12 of the county where such court is to be held shall draw from the jury box
13 the names of 30 persons to serve as grand jurors and the names of 24
14 persons to serve as petit jurors. In the event that a county has appropriate
15 base information programmed as a part of its computer operations so that
16 it might comply with the spirit of the jury selection laws of Kansas, the
17 jury commissioners may by local rule provide alternate methods for
18 securing jury panels directly from the computer without the necessity of
19 drawing names or cards from a wheel manually.

20 (b) *Upon receipt of a list of the legally qualified grand jurors from*
21 *the court pursuant to K.S.A. 22-3002, and amendments thereto, the clerk*
22 *of the county where such court is to be held shall draw for a second time*
23 *15 names of persons to serve as grand jurors from such list. In the event*
24 *that the county in which court is to be held has an alternate method for*
25 *securing jury panels directly from the computer, the clerk shall use the*
26 *computer to generate 15 names of persons to serve as grand jurors from*
27 *such list.*

28 ~~New Sec. 6. (a) If any party, such party's attorney or any grand juror~~
29 ~~believes that the judge to whom an action is assigned cannot afford that~~
30 ~~party a fair trial in the action, the party, party's attorney or grand juror may~~
31 ~~file a motion for change of judge. The motion shall not state the grounds~~
32 ~~for the party's, party's attorney's or grand juror's belief. The judge shall~~
33 ~~promptly hear the motion informally upon reasonable notice to all parties~~
34 ~~who have appeared in the case. If the judge disqualifies the judge's self, the~~
35 ~~action shall be assigned to another judge by the chief judge. If the judge~~
36 ~~refuses to disqualify the judge's self, the party or grand juror seeking a~~
37 ~~change of judge may file the affidavit provided for in subsection (b). If an~~
38 ~~affidavit is to be filed it shall be filed immediately.~~

39 ~~(b) If a party, party's attorney or grand juror files an affidavit alleging~~
40 ~~any of the grounds specified in subsection (c), the chief judge shall at once~~
41 ~~determine, or refer the affidavit to another district judge for prompt~~
42 ~~determination of the legal sufficiency of the affidavit. If the affidavit is~~
43 ~~filed in a district court in which there is no other judge who is qualified to~~

1 hear the matter, the chief judge shall at once notify the departmental justice
2 for the district and request the appointment of another district judge to
3 determine the legal sufficiency of the affidavit. If the affidavit is found to
4 be legally sufficient, the case shall be assigned to another judge.

5 ~~(c) Grounds which may be alleged as provided in subsection (b) for
6 change of judge are that:~~

7 ~~(1) The judge has been engaged as counsel in the action prior to the
8 appointment or election as judge.~~

9 ~~(2) The judge is otherwise interested in the action.~~

10 ~~(3) The judge is related to either party to the action.~~

11 ~~(4) The judge is a material witness in the action.~~

12 ~~(5) The party, party's attorney or grand juror filing the affidavit has
13 cause to believe and does believe that on account of the personal bias,
14 prejudice or interest of the judge such party cannot obtain a fair and
15 impartial trial or fair and impartial enforcement of post-judgment
16 remedies. Such affidavit shall state the facts and the reasons for the belief
17 that bias, prejudice or an interest exists.~~

18 ~~(d) In any affidavit filed pursuant to this section, the recital of
19 previous rulings or decisions by the judge on legal issues or concerning the
20 legal sufficiency of any prior affidavits filed by counsel for a party in any
21 judicial proceeding, or filed by such counsel's law firm, pursuant to this
22 section, shall not be deemed legally sufficient for any belief that bias or
23 prejudice exists.~~

24 ~~(e) This section shall be part of and supplemental to article 30 of
25 chapter 22 of the Kansas Statutes Annotated, and amendments thereto.~~

26 **New Sec. 6. (a) Upon a majority vote of the grand jury, the grand
27 jury may seek the removal of the assigned judge pursuant to K.S.A.
28 20-311d, and amendments thereto.**

29 **(b) This section shall be part of and supplemental to article 30 of
30 chapter 22 of the Kansas Statutes Annotated, and amendments
31 thereto.**

32 Sec. 7. K.S.A. 22-3002 and 22-3006 and K.S.A. 2012 Supp. 22-3001,
33 22-3008 and 43-107 are hereby repealed.

34 Sec. 8. This act shall take effect and be in force from and after its
35 publication in the statute book.