

SENATE BILL No. 261

By Committee on Federal and State Affairs

2-16

1 AN ACT concerning criminal procedure; relating to grand juries;
2 authorizing appeals from certain decisions related to citizen-initiated
3 grand juries; amending K.S.A. 2022 Supp. 22-3001 and 22-3008 and
4 repealing the existing sections.
5

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

7 Section 1. K.S.A. 2022 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 consider any alleged felony law violation, including any alleged
15 misdemeanor law violation—~~which~~ *that* arises as part of the same criminal
16 conduct or investigation. The attorney general in any judicial district may
17 petition the chief judge or the chief judge's designee in such judicial
18 district to order a grand jury to be summoned in the designated county in
19 the district to consider any alleged felony law violation, including any
20 alleged misdemeanor law violation—~~which~~ *that* arises as part of the same
21 criminal conduct or investigation, if authorized by the district or county
22 attorney in such judicial district or if jurisdiction is otherwise authorized
23 by law. The chief judge or the chief judge's designee in the district court of
24 the county shall then consider the petition and, if it is found that the
25 petition is in proper form, as set forth in this subsection, shall order a
26 grand jury to be summoned within 15 days after receipt of such petition.

27 (c) (1) A *citizen-initiated* grand jury shall be summoned in any county
28 within 60 days after a *citizen-initiated* petition praying therefor is
29 presented to the district court, bearing the signatures of a number of
30 electors equal to 100 plus 2% of the total number of votes cast for
31 governor in the county in the last preceding election.

32 (2) The *citizen-initiated* petition, upon its face, shall state the name,
33 address and phone number of the person filing—~~the~~ *such* petition, the
34 subject matter of the prospective *citizen-initiated* grand jury, a reasonably
35 specific identification of areas to be inquired into and sufficient general
36 allegations to warrant a finding that such inquiry may lead to information

1 ~~which that~~, if true, would warrant a true bill of indictment.

2 (3) (A) The *citizen-initiated* petition shall be in substantially the
3 following form:

4 The undersigned qualified electors of the county of _____
5 and state of Kansas hereby request that the district court of
6 _____ county, Kansas, within 60 days after the filing of this
7 petition, cause a *citizen-initiated* grand jury to be summoned in the county
8 to investigate alleged violations of law and to perform such other duties as
9 may be authorized by law.

10 (B) (i) The signatures to the *citizen-initiated* petition need not all be
11 affixed to one paper, but each paper to which signatures are affixed shall
12 have substantially the foregoing form written or printed at the top thereof.
13 Each signer shall add to such signer's signature such signer's place of
14 residence, giving the street and number or rural route number, if any. One
15 of the signers of each paper shall verify upon oath that each signature
16 appearing on the paper is the genuine signature of the person whose name
17 it purports to be and that such signer believes that the statements in ~~the~~
18 *such* petition are true.

19 (ii) The *citizen-initiated* petition shall be filed in the office of the
20 clerk of the district court who shall ~~forthwith~~ *immediately* transmit it to the
21 county election officer, who shall determine whether the persons whose
22 signatures are affixed to ~~the~~ *such* petition are qualified electors of the
23 county. Thereupon, the county election officer shall return ~~the~~ *such*
24 petition to the clerk of the district court, together with such election
25 officer's certificate stating the number of qualified electors of the county
26 whose signatures appear on ~~the~~ *such* petition and the aggregate number of
27 votes cast for all candidates for governor in the county in the last
28 preceding election.

29 (iii) The judge or judges of the district court of the county shall then
30 consider the *citizen-initiated* petition and, if it is found that ~~the~~ *such*
31 petition is in proper form and bears the signatures of the required number
32 of electors, a *citizen-initiated* grand jury shall be ordered to be summoned.
33 ~~If a grand jury is not summoned because of a finding that the petition,~~
34 ~~substantially in the form required by this subsection on its face, is not in~~
35 ~~proper form, the person who filed the petition and whose name, address~~
36 ~~and phone number appear on the face of each petition shall have the right~~
37 ~~to appeal the decision to not summon a grand jury as a final judgment~~
38 ~~pursuant to K.S.A. 22-3601, and amendments thereto.~~

39 (4) After a *citizen-initiated* grand jury is summoned pursuant to this
40 subsection, but before it begins deliberations, the judge or judges of the
41 district court of the county ~~in which the~~ *where such* petition is presented
42 shall provide instructions to the *citizen-initiated* grand jury regarding its
43 conduct and deliberations, which ~~instructions~~ shall include, but not be

1 limited to, the following:

2 (A) You have been impaneled as a *citizen-initiated* grand jury
3 pursuant to a ~~citizens'~~ *citizen-initiated* petition filed in this court, signed by
4 (insert number) qualified electors of this county, stating (insert the subject
5 matter described in ~~the~~ *such* petition, including a reasonably specific
6 identification of the areas to be inquired into and the allegations sufficient
7 to warrant a finding that the grand jury's inquiry may lead to information
8 ~~which~~ *that*, if true, would warrant a true bill of indictment). You are
9 charged with making inquiry with regard to this subject matter and
10 determining whether the facts support allegations warranting a true bill of
11 indictment.

12 (B) The person filing the ~~citizens'~~ *citizen-initiated* petition filed in
13 this court must be the first witness you call for the purpose of presenting
14 evidence and testimony as to the subject matter and allegations of ~~the~~ *such*
15 petition.

16 (C) You may, with the approval of this court, employ special counsel
17 and investigators, and incur such other expense for services and supplies
18 as you and this court deem necessary. Any special counsel or investigator
19 you employ shall be selected by a majority vote of your *citizen-initiated*
20 grand jury. You may make such selection only after hearing testimony
21 from the person who filed the ~~citizens'~~ *citizen-initiated* petition. You may
22 utilize the services of any special counsel or investigator you employ
23 instead of, or in addition to, the services of the prosecuting attorney.

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

27 (E) If any witness appearing before you refuses to testify or to answer
28 any questions asked in the course of the witness' examination, you shall
29 communicate that fact to this court in writing, together with a statement
30 regarding the question the witness refuses to answer. This court will
31 determine and inform you of whether the witness is bound to answer or
32 not. However, no witness appearing before you can be compelled to make
33 any statement ~~which~~ *that* will incriminate such witness.

34 (F) Any person may file a written request with the prosecuting
35 attorney or with the ~~foreman~~ *foreperson* of the *citizen-initiated* grand jury
36 and request to testify or retestify in an inquiry before a grand jury or to
37 appear before a grand jury. Any written request shall include a summary of
38 such person's written testimony.

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

41 (d) The grand jury shall consist of 15 members and shall be drawn,
42 qualified and summoned in the same manner as petit jurors for the district
43 court. Twelve members thereof shall constitute a quorum. The judge or

1 judges ordering the grand jury shall direct that a sufficient number of
2 legally qualified persons be summoned for service as grand jurors. In the
3 case of *citizen-initiated* grand juries impaneled pursuant to subsection (c),
4 the judge or judges ordering the grand jury shall allow the person that filed
5 the *citizen-initiated* petition under the provisions of subsection (c)(2), and
6 such person's attorney, to witness the instructions to the *citizen-initiated*
7 grand jury regarding its conduct and deliberations pursuant to subsection
8 (c)(4).

9 (e) (1) *In the case of a citizen-initiated petition pursuant to*
10 *subsection (c):*

11 (A) *If a citizen-initiated grand jury is not summoned because of a*
12 *finding that the petition, substantially in the form required by subsection*
13 *(c) on its face, is not in proper form, the initiating person shall have the*
14 *right to appeal the decision to not summon a citizen-initiated grand jury*
15 *as a final judgment pursuant to K.S.A. 22-3601, and amendments thereto.*

16 (B) *If a court decides an issue related to the procedures or*
17 *management of a citizen-initiated grand jury that the initiating person*
18 *alleges is contrary to law, including, but not limited to, a decision to*
19 *employ any special counsel or investigator prior to selection by majority*
20 *vote of such grand jury after hearing testimony from the initiating person*
21 *as required by K.S.A. 22-3006, and amendments thereto, the initiating*
22 *person shall have the right to appeal such decision as a final judgment*
23 *pursuant to K.S.A. 22-3601, and amendments thereto, upon completion of*
24 *the grand jury's investigation as provided in K.S.A. 22-3013, and*
25 *amendments thereto.*

26 (2) *As used in this subsection, "initiating person" means the person*
27 *who filed the petition and whose name, address and phone number appear*
28 *on the face of each petition.*

29 Sec. 2. K.S.A. 2022 Supp. 22-3008 is hereby amended to read as
30 follows: 22-3008. (a) (1) Whenever required by any grand jury, its
31 presiding juror or the prosecuting attorney, the clerk of the court in which
32 the jury is impaneled shall issue subpoenas and other process to bring
33 witnesses to testify before the grand jury. ~~The person who filed the petition~~

34 (2) *If a citizen-initiated grand jury is impaneled pursuant to K.S.A.*
35 *22-3001(c), and amendments thereto, the initiating person, as defined in*
36 *K.S.A. 22-3001, and amendments thereto, shall be the first witness called*
37 *by the citizen-initiated grand jury for the purpose of presenting evidence*
38 *and testimony as to the subject matter and allegations of the such petition.*

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

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

7 (d) No witness before a grand jury shall be required to incriminate the
8 witness' self.

9 (e) (1) The county or district attorney, or the attorney general, at any
10 time, on behalf of the state, and the district judge, upon determination that
11 the interest of justice requires, and after giving notice to the prosecuting
12 attorney and hearing the prosecuting attorney's recommendations on the
13 matter, may grant in writing to any person:

14 (A) Transactional immunity. Any person granted transactional
15 immunity shall not be prosecuted for any crime ~~which~~ *that* has been
16 committed for which such immunity is granted or for any other
17 transactions arising out of the same incident.

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

29 (2) Any person granted immunity under either or both of subsections
30 (e)(1)(A) or (e)(1)(B) may not refuse to testify on grounds that such
31 testimony may self incriminate unless such testimony may form the basis
32 for a violation of federal law for which immunity under federal law has not
33 been conferred. No person shall be compelled to testify in any proceeding
34 where the person is a defendant.

35 (3) No immunity shall be granted for perjury as provided in K.S.A.
36 2022 Supp. 21-5903, and amendments thereto, ~~which~~ *that* was committed
37 in giving such evidence.

38 (f) If the judge determines that the witness must answer and if the
39 witness persists in refusing to answer, the witness shall be brought before
40 the judge, who shall proceed in the same manner as if the witness had been
41 interrogated and had refused to answer in open court.

42 (g) Any person may file a written request with the prosecuting
43 attorney or with the ~~foreman~~ *foreperson* of the grand jury and request to

1 testify or retestify in an inquiry before a grand jury or to appear before a
2 grand jury. Any written request shall include a summary of such person's
3 written testimony.

4 Sec. 3. K.S.A. 2022 Supp. 22-3001 and 22-3008 are hereby repealed.

5 Sec. 4. This act shall take effect and be in force from and after its
6 publication in the statute book.