

SENATE BILL No. 80

By Committee on Judiciary

1-28

1 AN ACT concerning grand juries; amending K.S.A. 22-3002, 22-3003, 22-
2 3004, 22-3005, 22-3006, 22-3007, 22-3009, 22-3010, 22-3011, 22-
3 3012, 22-3013 and 22-3014 and K.S.A. 2012 Supp. 22-3001 and 22-
4 3008 and repealing the existing 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~~ *consider any*
16 *alleged felony law violation*. The chief judge or the chief judge's designee
17 in the district court of the county shall then consider the petition and, if it
18 is found that the petition is in proper form, as set forth in this subsection,
19 shall order a grand jury to be summoned *within 15 days after receipt of*
20 *such petition*.

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

26 The undersigned qualified electors of the county of _____
27 and state of Kansas hereby request that the district court of
28 _____ county, Kansas, within 60 days after the filing of this
29 petition, cause a grand jury to be summoned in the county to investigate
30 alleged violations of law and to perform such other duties as may be
31 authorized by law.

32 The signatures to the petition need not all be affixed to one paper, but
33 each paper to which signatures are affixed shall have substantially the
34 foregoing form written or printed at the top thereof. Each signer shall add
35 to such signer's signature such signer's place of residence, giving the street
36 and number or rural route number, if any. One of the signers of each paper

1 shall verify upon oath that each signature appearing on the paper is the
2 genuine signature of the person whose name it purports to be and that such
3 signer believes that the statements in the petition are true. The petition
4 shall be filed in the office of the clerk of the district court who shall
5 forthwith transmit it to the county election officer, who shall determine
6 whether the persons whose signatures are affixed to the petition are
7 qualified electors of the county. Thereupon, the county election officer
8 shall return the petition to the clerk of the district court, together with such
9 election officer's certificate stating the number of qualified electors of the
10 county whose signatures appear on the petition and the aggregate number
11 of votes cast for all candidates for governor in the county in the last
12 preceding election. The judge or judges of the district court of the county
13 shall then consider the petition and, if it is found that the petition is in
14 proper form and bears the signatures of the required number of electors, a
15 grand jury shall be ordered to be summoned.

16 (d) The grand jury shall consist of 15 members and shall be drawn,
17 *qualified* and summoned in the same manner as petit jurors for the district
18 court. Twelve members thereof shall constitute a quorum. The judge or
19 judges ordering the grand jury shall direct that a sufficient number of
20 legally qualified persons be summoned for service as grand jurors.

21 Sec. 2. K.S.A. 22-3002 is hereby amended to read as follows: 22-
22 3002. (†) (a) The prosecuting attorney may challenge the array of jurors on
23 the ground that the grand jury was not selected, drawn or summoned in
24 accordance with law, and may challenge an individual juror on the ground
25 that the juror is not legally qualified. Challenges by the state shall be made
26 before the administration of the oath to the jurors and shall be tried by the
27 court.

28 (⊖) (b) A motion to dismiss the indictment made by the defendant
29 may be based on objections to the array or on the lack of legal
30 qualification of an individual juror. An indictment shall not be dismissed
31 on the ground that one or more members of the grand jury were not legally
32 qualified if it appears from the record kept pursuant to K.S.A. 22-3004,
33 *and amendments thereto*, that 12 or more jurors, after deducting the jurors
34 not legally qualified, concurred in finding the indictment.

35 Sec. 3. K.S.A. 22-3003 is hereby amended to read as follows: 22-
36 3003. (a) An oath or affirmation shall be administered to the presiding
37 juror of the grand jury, in substance as follows:

38 "You, as presiding juror of the grand jury, shall diligently inquire, and
39 true presentment make, of all public offenses against the laws of this state
40 cognizable by this court, committed or triable within this county, of which
41 you have or can obtain legal evidence. You shall present no person through
42 malice, hatred or ill will, nor leave any unrepresented through fear, favor or
43 affection, or for any reward or the promise of hope thereof, but in all your

1 presentments you shall present the truth, the whole truth, and nothing but
2 the truth, according to the best of your skill and understanding."

3 (b) Other members of the grand jury shall be administered the
4 following oath:

5 "The same oath or affirmation, which your presiding juror has taken
6 now before you on the presiding juror's part, you and each of you shall
7 well and truly observe on your part."

8 Sec. 4. K.S.A. 22-3004 is hereby amended to read as follows: 22-
9 3004. (a) The court shall appoint one of the jurors to be presiding juror and
10 another to be deputy presiding juror.

11 (b) The presiding juror shall have power to administer oaths and
12 affirmations and shall sign all indictments.

13 (c) The presiding juror or another juror designated by the presiding
14 juror shall keep a record of the name of each juror concurring in the
15 finding of every indictment and shall file the record with the clerk of the
16 court, but the record shall not be made public except on order of the court.

17 (d) During the absence of the presiding juror, the deputy presiding
18 juror shall act as presiding juror.

19 Sec. 5. K.S.A. 22-3005 is hereby amended to read as follows: 22-
20 3005. (†) (a) When a grand jury is impaneled and sworn, it shall be
21 charged by the judge who summoned it. In so doing, the judge shall give
22 the grand jurors such information as ~~he~~ *the judge* deems proper and as is
23 required by law, as to their duties, and as to any charges of crimes known
24 to the court and likely to come before the grand jury.

25 (‡) (b) When the grand jury has been impaneled, sworn and charged,
26 it shall retire to a private room, and inquire into the crimes cognizable by
27 it.

28 Sec. 6. K.S.A. 22-3006 is hereby amended to read as follows: 22-
29 3006. (†) (a) Persons summoned for service as grand jurors shall be
30 compensated for their service and expenses at the rates provided by law
31 for the compensation of petit jurors in the district court. Such
32 compensation shall be paid from the general fund of the county.

33 (‡) (b) The grand jury shall employ a certified shorthand reporter who
34 shall make a stenographic record of all testimony and other proceedings
35 before the grand jury. The compensation of the reporter shall be fixed by
36 the district court and paid from the general fund of the county.

37 (‡) (c) The grand jury may, with the approval of the district court,
38 ~~employ special counsel, investigators, and incur such other expense~~
39 *employ investigators and, except in the case of grand juries impaneled*
40 *pursuant to subsection (b) of K.S.A. 22-3001, and amendments thereto,*
41 *employ special counsel. The grand jury may also incur other expenses* for
42 services and supplies as it and the *district* court may deem necessary.
43 Compensation for such services and supplies shall be fixed by the district

1 court and shall be paid from the general fund of the county.

2 Sec. 7. K.S.A. 22-3007 is hereby amended to read as follows: 22-
3 3007. ~~(+) (a) In the case of grand juries impaneled pursuant to subsection~~
4 ~~(a) or (c) of K.S.A. 22-3001, and amendments thereto, the prosecuting~~
5 ~~attorney shall:~~

6 ~~(1) When requested by any grand jury it shall be the duty of the~~
7 ~~prosecuting attorney to, attend sessions thereof for the purpose of~~
8 ~~examining witnesses or giving the grand jury advice upon any legal matter;~~
9 ~~; and~~

10 ~~(2) The prosecuting attorney shall, upon his~~ *upon such attorney's*
11 *request, be permitted to appear before the grand jury for the purpose of*
12 *giving information relative to any matter cognizable by the grand jury, and*
13 *may be permitted to interrogate witnesses if the grand jury deems it*
14 *necessary.*

15 ~~(b) In the case of grand juries impaneled pursuant to subsection (b)~~
16 ~~of K.S.A. 22-3001, and amendments thereto, the prosecuting attorney~~
17 ~~shall:~~

18 ~~(1) Attend all sessions thereof and inform the grand jury of all~~
19 ~~offenses liable to indictment and evidence of which will be presented to~~
20 ~~them for consideration;~~

21 ~~(2) present witnesses and examine such witnesses on all matters to be~~
22 ~~considered by the grand jury; and~~

23 ~~(3) give the grand jury advice upon all questions related to the~~
24 ~~proper discharge of their duties.~~

25 Sec. 8. K.S.A. 2012 Supp. 22-3008 is hereby amended to read as
26 follows: 22-3008. ~~(+) (a) Whenever required by any grand jury, its~~
27 ~~presiding juror or the prosecuting attorney, the clerk of the court in which~~
28 ~~the jury is impaneled shall issue subpoenas and other process to bring~~
29 ~~witnesses to testify before the grand jury.~~

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

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

41 ~~(4) (d) No witness before a grand jury shall be required to incriminate~~
42 ~~the witness' self.~~

43 ~~(5) (a) (e) (1) The county or district attorney, or the attorney general,~~

1 at any time, on behalf of the state, and the district judge, upon
 2 determination that the interest of justice requires, and after giving notice to
 3 the prosecuting attorney and hearing the prosecuting attorney's
 4 recommendations on the matter, may grant in writing to any person:

5 ~~(†)~~ (A) Transactional immunity. Any person granted transactional
 6 immunity shall not be prosecuted for any crime which has been committed
 7 for which such immunity is granted or for any other transactions arising
 8 out of the same incident.

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

20 ~~(††)~~ (2) Any person granted immunity under either or both of
 21 subsections ~~(5)(a)(†) or (††)~~ (e)(1)(A) or (e)(1)(B) may not refuse to testify
 22 on grounds that such testimony may self incriminate unless such testimony
 23 may form the basis for a violation of federal law for which immunity
 24 under federal law has not been conferred. No person shall be compelled to
 25 testify in any proceeding where the person is a defendant.

26 ~~(†)~~ (3) No immunity shall be granted for perjury as provided in
 27 K.S.A. 2012 Supp. 21-5903, and amendments thereto, which was
 28 committed in giving such evidence.

29 ~~(†)~~ (f) If the judge determines that the witness must answer and if the
 30 witness persists in refusing to answer, the witness shall be brought before
 31 the judge, who shall proceed in the same manner as if the witness had been
 32 interrogated and had refused to answer in open court.

33 Sec. 9. K.S.A. 22-3009 is hereby amended to read as follows: 22-
 34 3009. ~~(†)~~ (a) Any person called to testify before a grand jury must be
 35 informed that ~~he~~ *such person* has a right to be advised by counsel and that
 36 ~~he may~~ *such person shall* not be required to make any statement which
 37 will incriminate ~~him~~ *such person*. Upon a request by such person for
 38 counsel, no further examination of the witness shall take place until
 39 counsel is present. In the event that counsel of the witness' choice is not
 40 available, ~~he~~ *the witness* shall be required to obtain other counsel within
 41 three ~~(3)~~ days in order that the work of the grand jury may proceed. If such
 42 person is indigent and unable to obtain the services of counsel, the court
 43 shall appoint counsel to assist ~~him~~ *such person* who shall be compensated

1 as counsel appointed for indigent defendants in the district court.

2 ~~(2)~~ (b) Counsel for any witness may be present while the witness is
3 testifying and may interpose objections on behalf of the witness. ~~He~~ *Such*
4 *counsel* shall not be permitted to examine or cross-examine ~~his such~~
5 *counsel's* client or any other witness before the grand jury.

6 Sec. 10. K.S.A. 22-3010 is hereby amended to read as follows: 22-
7 3010. Prosecuting attorneys, special counsel employed by the grand jury,
8 the witness under examination and ~~his such witness'~~ counsel, interpreters
9 when needed and, for the purpose of taking the evidence, the reporter for
10 the grand jury, may be present while the grand jury is in session, but no
11 person other than the jurors may be present while the grand jury is
12 deliberating or voting.

13 Sec. 11. K.S.A. 22-3011 is hereby amended to read as follows: 22-
14 3011. ~~(1)~~ (a) An indictment may be found only on the concurrence of 12 or
15 more grand jurors. When an indictment is found, the presiding juror shall
16 endorse thereon "a true bill" and shall sign the presiding juror's name as
17 presiding juror.

18 ~~(2)~~ (b) When 12 or more grand jurors do not concur in finding an
19 indictment, the presiding juror shall certify that the indictment is "not a
20 true bill."

21 ~~(3)~~ (c) Indictments found by the grand jury shall be presented by its
22 presiding juror, in the jury's presence, to the court and shall be filed and
23 remain as records of the court.

24 Sec. 12. K.S.A. 22-3012 is hereby amended to read as follows: 22-
25 3012. (a) Disclosure of matters occurring before the grand jury other than
26 its deliberations and the vote of any juror ~~may shall~~ be made to the
27 prosecuting attorney for use in the performance of ~~his such attorney's~~
28 duties.

29 (b) Otherwise a juror, attorney, interpreter, reporter or any typist who
30 transcribes recorded testimony ~~may shall not~~ disclose matters occurring
31 before the grand jury ~~only when so directed by the court preliminarily to or~~
32 ~~in connection with a judicial proceeding or when permitted by the court at~~
33 ~~the request of the defendant upon a showing that grounds may exist for a~~
34 ~~motion to dismiss the indictment because of matters occurring before the~~
35 ~~grand jury except, upon court order:~~

36 (1) *The testimony of a witness before the grand jury may be disclosed*
37 *to a defendant to determine whether it is consistent with testimony given*
38 *before the court, but only upon a showing of good cause;*

39 (2) *evidentiary materials presented to one grand jury may be*
40 *disclosed to a succeeding grand jury; and*

41 (3) *grand jury testimony by a defendant may be disclosed to such*
42 *defendant, but only in the criminal action resulting from such testimony.*

43 (c) No obligation of secrecy may be imposed upon any person except

1 in accordance with this ~~rule~~ *section*. The court may direct that an
2 indictment shall be kept secret until the defendant is in custody or has
3 given bail, and in that event the clerk shall seal the indictment and no
4 person shall disclose the finding of the indictment except when necessary
5 for the issuance and execution of a warrant or summons.

6 Sec. 13. K.S.A. 22-3013 is hereby amended to read as follows: 22-
7 3013. ~~(+)~~ (a) A grand jury *impaneled pursuant to subsection (a) or (c) of*
8 *K.S.A. 22-3001, and amendments thereto*, shall serve until it shall advise
9 the court in writing that it has completed its investigation, but no *such*
10 grand jury shall serve for more than three months unless extended by order
11 of the district court. The district court may, before the expiration of the
12 tenure of a *such* grand jury, make an order extending such grand jury for
13 an additional period of not to exceed three months if the court finds that an
14 investigation begun by ~~the~~ *such* grand jury cannot be completed within the
15 initial three months period and that the public interest requires the
16 continuation of ~~the~~ *such* grand jury.

17 (b) *A grand jury impaneled pursuant to subsection (b) of K.S.A. 22-*
18 *3001, and amendments thereto, shall serve for a period of six months. The*
19 *district court may, before the expiration of the tenure of such grand jury,*
20 *make an order extending such grand jury for an additional period of not to*
21 *exceed six months upon good cause shown by such grand jury.*

22 ~~(2)~~ (c) At any time for cause shown the court may excuse a juror
23 either temporarily or permanently, and in the latter event the court may
24 impanel another person in place of the juror excused.

25 Sec. 14. K.S.A. 22-3014 is hereby amended to read as follows: 22-
26 3014. (a) Witnesses attending a grand jury in response to a subpoena shall
27 be allowed the same fees as are allowed witnesses in criminal cases in the
28 district court.

29 (b) ~~The~~ *Such* witness fees shall be paid from the general fund of the
30 county upon a certificate of attendance signed by the presiding juror of the
31 grand jury.

32 New Sec. 15. (a) *Matters of form, time, place, names.* At any time
33 before or during trial, the court may, upon application of the people and
34 with notice to the defendant and opportunity for the defendant to be heard,
35 order the amendment of an indictment with respect to defects, errors or
36 variances from the proof relating to matters of form, time, place and names
37 of persons when such amendment does not change the substance of the
38 charge, and does not prejudice the defendant on the merits. Upon ordering
39 an amendment, the court, for good cause shown, may grant a continuance
40 to provide the defendant adequate opportunity to prepare a defense.

41 (b) *Prohibition as to matters of substance.* An indictment shall not be
42 amended as to the substance of the offense charged.

43 Sec. 16. K.S.A. 22-3002, 22-3003, 22-3004, 22-3005, 22-3006, 22-

1 3007, 22-3009, 22-3010, 22-3011, 22-3012, 22-3013 and 22-3014 and
2 K.S.A. 2012 Supp. 22-3001 and 22-3008 are hereby repealed.
3 Sec. 17. This act shall take effect and be in force from and after its
4 publication in the statute book.