

As Amended by House Committee

As Amended by Senate Committee

Session of 2013

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 43-107** 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 attorney general in any judicial district or the~~ district or
12 county attorney in such attorney's county may petition the chief judge or
13 the chief judge's designee in such district court to order a grand jury to be
14 summoned in the designated county in the district to ~~investigate alleged~~
15 ~~violations of an off-grid felony, a severity level 1, 2, 3 or 4 felony or a~~
16 ~~drug severity level 1 or 2 felony~~ *consider any alleged felony law violation.*
17 The chief judge or the chief judge's designee in the district court of the
18 county shall then consider the petition and, if it is found that the petition is
19 in proper form, as set forth in this subsection, shall order a grand jury to be
20 summoned *within 15 days after receipt of such petition.*

21 (c) **(1)** 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.

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

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

33 The undersigned qualified electors of the county of _____
34 and state of Kansas hereby request that the district court of

1 _____ county, Kansas, within 60 days after the filing of this
2 petition, cause a grand jury to be summoned in the county to investigate
3 alleged violations of law and to perform such other duties as may be
4 authorized by law.

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

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

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

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

43 **(C) You may, with the approval of this court, employ special**

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

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

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

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

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

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

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

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

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

7 Sec. 3. K.S.A. 22-3003 is hereby amended to read as follows: 22-
8 3003. (a) An oath or affirmation shall be administered to the presiding
9 juror of the grand jury, in substance as follows:

10 "You, as presiding juror of the grand jury, shall diligently inquire, and
11 true presentment make, of all public offenses against the laws of this state
12 cognizable by this court, committed or triable within this county, of which
13 you have or can obtain legal evidence. You shall present no person through
14 malice, hatred or ill will, nor leave any unrepresented through fear, favor or
15 affection, or for any reward or the promise of hope thereof, but in all your
16 presentments you shall present the truth, the whole truth, and nothing but
17 the truth, according to the best of your skill and understanding."

18 (b) Other members of the grand jury shall be administered the
19 following oath:

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

23 Sec. 4. K.S.A. 22-3004 is hereby amended to read as follows: 22-
24 3004. (a) The court shall appoint one of the jurors to be presiding juror and
25 another to be deputy presiding juror.

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

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

32 (d) During the absence of the presiding juror, the deputy presiding
33 juror shall act as presiding juror.

34 Sec. 5. K.S.A. 22-3005 is hereby amended to read as follows: 22-
35 3005. (†) (a) When a grand jury is impaneled and sworn, it shall be
36 charged by the judge who summoned it. In so doing, the judge shall give
37 the grand jurors such information as ~~he~~ *the judge* deems proper and as is
38 required by law, as to their duties, and as to any charges of crimes known
39 to the court and likely to come before the grand jury.

40 (↔) (b) When the grand jury has been impaneled, sworn and charged,
41 it shall retire to a private room, and inquire into the crimes cognizable by
42 it.

43 Sec. 6. K.S.A. 22-3006 is hereby amended to read as follows: 22-

1 3006. (†) (a) Persons summoned for service as grand jurors shall be
 2 compensated for their service and expenses at the rates provided by law
 3 for the compensation of petit jurors in the district court. Such
 4 compensation shall be paid from the general fund of the county.

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

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

23 Sec. 7. K.S.A. 22-3007 is hereby amended to read as follows: 22-
 24 3007. (†) (a) *In the case of grand juries impaneled pursuant to subsection*
 25 *(a) or (c) of K.S.A. 22-3001, and amendments thereto, the prosecuting*
 26 *attorney shall:*

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

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

36 (b) *In the case of grand juries impaneled pursuant to subsection (b)*
 37 *of K.S.A. 22-3001, and amendments thereto, the prosecuting attorney*
 38 *shall:*

39 (1) *Attend all sessions thereof and inform the grand jury of all*
 40 *offenses liable to indictment and evidence of which will be presented to*
 41 *them for consideration;*

42 (2) *present witnesses and examine such witnesses on all matters to be*
 43 *considered by the grand jury; and*

1 (3) *give the grand jury advice upon all questions related to the*
2 *proper discharge of their duties.*

3 Sec. 8. K.S.A. 2012 Supp. 22-3008 is hereby amended to read as
4 follows: 22-3008. (†) (a) Whenever required by any grand jury, its
5 presiding juror or the prosecuting attorney, the clerk of the court in which
6 the jury is impaneled shall issue subpoenas and other process to bring
7 witnesses to testify before the grand jury. **The person who filed the**
8 **petition pursuant to K.S.A. 2012 Supp. 22-3001, and amendments**
9 **thereto, shall be the first witness called by the grand jury for the**
10 **purpose of presenting evidence and testimony as to the subject matter**
11 **and allegations of the petition.**

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

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

23 (4) (d) No witness before a grand jury shall be required to incriminate
24 the witness' self.

25 (5)(a) (e) (I) The county or district attorney, or the attorney general,
26 at any time, on behalf of the state, and the district judge, upon
27 determination that the interest of justice requires, and after giving notice to
28 the prosecuting attorney and hearing the prosecuting attorney's
29 recommendations on the matter, may grant in writing to any person:

30 (†) (A) Transactional immunity. Any person granted transactional
31 immunity shall not be prosecuted for any crime which has been committed
32 for which such immunity is granted or for any other transactions arising
33 out of the same incident.

34 (††) (B) Use and derivative immunity. Any person granted use and
35 derivative use immunity may be prosecuted for any crime, but the state
36 shall not use any testimony against such person provided under a grant of
37 such immunity or any evidence derived from such testimony. Any
38 defendant may file with the court a motion to suppress in writing to
39 prevent the state from using evidence on the grounds that the evidence was
40 derived from and obtained against the defendant as a result of testimony or
41 statements made under such grant of immunity. The motion shall state
42 facts supporting the allegations. Upon a hearing on such motion, the state
43 shall have the burden to prove by clear and convincing evidence that the

1 evidence was obtained independently and from a collateral source.

2 ~~(b)~~ (2) Any person granted immunity under either or both of
 3 subsections ~~(5)(a)(i) or (ii)~~ (e)(1)(A) or (e)(1)(B) may not refuse to testify
 4 on grounds that such testimony may self incriminate unless such testimony
 5 may form the basis for a violation of federal law for which immunity
 6 under federal law has not been conferred. No person shall be compelled to
 7 testify in any proceeding where the person is a defendant.

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

11 ~~(6)~~ (f) If the judge determines that the witness must answer and if the
 12 witness persists in refusing to answer, the witness shall be brought before
 13 the judge, who shall proceed in the same manner as if the witness had been
 14 interrogated and had refused to answer in open court.

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

20 Sec. 9. K.S.A. 22-3009 is hereby amended to read as follows: 22-
 21 3009. ~~(4)~~ (a) Any person called to testify before a grand jury must be
 22 informed that ~~he~~ *such person* has a right to be advised by counsel and that
 23 ~~he may~~ *such person shall* not be required to make any statement which
 24 will incriminate ~~him~~ *such person*. Upon a request by such person for
 25 counsel, no further examination of the witness shall take place until
 26 counsel is present. In the event that counsel of the witness' choice is not
 27 available, ~~he~~ *the witness* shall be required to obtain other counsel within
 28 three ~~(3)~~ days in order that the work of the grand jury may proceed. If such
 29 person is indigent and unable to obtain the services of counsel, the court
 30 shall appoint counsel to assist ~~him~~ *such person* who shall be compensated
 31 as counsel appointed for indigent defendants in the district court.

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

36 Sec. 10. K.S.A. 22-3010 is hereby amended to read as follows: 22-
 37 3010. Prosecuting attorneys, special counsel employed by the grand jury,
 38 the witness under examination and ~~his~~ *such witness'* counsel, interpreters
 39 when needed and, for the purpose of taking the evidence, the reporter for
 40 the grand jury, may be present while the grand jury is in session, but no
 41 person other than the jurors may be present while the grand jury is
 42 deliberating or voting.

43 Sec. 11. K.S.A. 22-3011 is hereby amended to read as follows: 22-

1 3011. (†) (a) An indictment may be found only on the concurrence of 12 or
2 more grand jurors. When an indictment is found, the presiding juror shall
3 endorse thereon "a true bill" and shall sign the presiding juror's name as
4 presiding juror.

5 (‡) (b) When 12 or more grand jurors do not concur in finding an
6 indictment, the presiding juror shall certify that the indictment is "not a
7 true bill."

8 (⊕) (c) Indictments found by the grand jury shall be presented by its
9 presiding juror, in the jury's presence, to the court and shall be filed and
10 remain as records of the court.

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

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

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

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

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

30 (c) No obligation of secrecy may be imposed upon any person except
31 in accordance with this ~~rule~~ section. The court may direct that an
32 indictment shall be kept secret until the defendant is in custody or has
33 given bail, and in that event the clerk shall seal the indictment and no
34 person shall disclose the finding of the indictment except when necessary
35 for the issuance and execution of a warrant or summons.

36 Sec. 13. K.S.A. 22-3013 is hereby amended to read as follows: 22-
37 3013. (†) (a) A grand jury impaneled pursuant to subsection (a) or (c) of
38 K.S.A. 22-3001, and amendments thereto, shall serve until it shall advise
39 the court in writing that it has completed its investigation, but no such
40 grand jury shall serve for more than three months unless extended by order
41 of the district court. The district court may, before the expiration of the
42 tenure of a such grand jury, make an order extending such grand jury for
43 an additional period of not to exceed three months if the court finds that an

1 investigation begun by ~~the~~ *such* grand jury cannot be completed within the
2 initial three months period and that the public interest requires the
3 continuation of ~~the~~ *such* grand jury.

4 (b) *A grand jury impaneled pursuant to subsection (b) of K.S.A. 22-*
5 *3001, and amendments thereto, shall serve for a period of six months. The*
6 *district court may, before the expiration of the tenure of such grand jury,*
7 *make an order extending such grand jury for an additional period of not to*
8 *exceed six months upon good cause shown by such grand jury.*

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

12 Sec. 14. K.S.A. 22-3014 is hereby amended to read as follows: 22-
13 3014. (a) Witnesses attending a grand jury in response to a subpoena shall
14 be allowed the same fees as are allowed witnesses in criminal cases in the
15 district court.

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

19 New Sec. 15. (a) *Matters of form, time, place, names.* At any time
20 before or during trial, the court may, upon application of the people and
21 with notice to the defendant and opportunity for the defendant to be heard,
22 order the amendment of an indictment with respect to defects, errors or
23 variances from the proof relating to matters of form, time, place and names
24 of persons when such amendment does not change the substance of the
25 charge, and does not prejudice the defendant on the merits. Upon ordering
26 an amendment, the court, for good cause shown, may grant a continuance
27 to provide the defendant adequate opportunity to prepare a defense.

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

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

41 (b) *Upon receipt of a list of the legally qualified grand jurors from*
42 *the court pursuant to K.S.A. 22-3002, and amendments thereto, the clerk*
43 *of the county where such court is to be held shall draw for a second time*

1 *15 names of persons to serve as grand jurors from such list. In the event*
2 *that the county in which court is to be held has an alternate method for*
3 *securing jury panels directly from the computer; the clerk shall use the*
4 *computer to generate 15 names of persons to serve as grand jurors from*
5 *such list.*

6 **New Sec. 17. (a) Upon a majority vote of the grand jury, the**
7 **grand jury may seek the removal of the assigned judge pursuant to**
8 **K.S.A. 20-311d, and amendments thereto.**

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

12 ~~Sec. 16.~~ **18.** K.S.A. 22-3002, 22-3003, 22-3004, 22-3005, 22-3006,
13 22-3007, 22-3009, 22-3010, 22-3011, 22-3012, 22-3013 and 22-3014 and
14 K.S.A. 2012 Supp. 22-3001 ~~and~~, 22-3008 **and 43-107** are hereby
15 repealed.

16 ~~Sec. 17.~~ **19.** This act shall take effect and be in force from and after
17 its publication in the statute book.