

SENATE BILL No. 492

By Committee on Federal and State Affairs

2-10

1 AN ACT concerning grand juries; relating to citizen-initiated grand juries;
2 providing immunity from civil liability for the person who files a
3 citizen-initiated grand jury petition; requiring such person to be the first
4 witness called by such grand jury; amending K.S.A. 2021 Supp. 22-
5 3001 and 22-3008 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 2021 Supp. 22-3001 is hereby amended to read as
9 follows: 22-3001. (a) A majority of the district judges in any judicial
10 district may order a grand jury to be summoned in any county in the
11 district when it is determined to be in the public interest.

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

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

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

1 allegations to warrant a finding that such inquiry may lead to information
2 ~~which that~~, if true, would warrant a true bill of indictment.

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

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

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

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

30 (iii) The judge or judges of the district court of the county shall then
31 consider the *citizen-initiated* petition and, if it is found that ~~the such~~
32 petition is in proper form and bears the signatures of the required number
33 of electors, a *citizen-initiated* grand jury shall be ordered to be summoned.
34 If a *citizen-initiated* grand jury is not summoned because of a finding that
35 ~~the such~~ petition, substantially in the form required by this subsection on
36 its face, is not in proper form, the person who filed ~~the such~~ petition and
37 whose name, address and phone number appear on the face of each
38 petition shall have the right to appeal the decision to not summon a
39 *citizen-initiated* grand jury as a final judgment pursuant to K.S.A. 22-
40 3601, and amendments thereto.

41 (4) After a *citizen-initiated* grand jury is summoned pursuant to this
42 subsection, but before it begins deliberations, the judge or judges of the
43 district court of the county ~~in which the~~ *where such* petition is presented

1 shall provide instructions to the *citizen-initiated* grand jury regarding its
2 conduct and deliberations, which ~~instructions~~ shall include, but not be
3 limited to, the following:

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

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

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

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

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

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

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

43 (5) *The person who filed the citizen-initiated petition and whose*

1 *name, address and phone number appear on the face of each petition shall*
2 *be immune from civil liability arising out of any action taken by such*
3 *person pursuant to this article if such action was taken in good faith.*

4 (d) The grand jury shall consist of 15 members and shall be drawn,
5 qualified and summoned in the same manner as petit jurors for the district
6 court. Twelve members thereof shall constitute a quorum. The judge or
7 judges ordering the grand jury shall direct that a sufficient number of
8 legally qualified persons be summoned for service as grand jurors. In the
9 case of *citizen-initiated* grand juries impaneled pursuant to subsection (c),
10 the judge or judges ordering the grand jury shall allow the person that filed
11 the *citizen-initiated* petition under the provisions of subsection (c)(2), and
12 such person's attorney, to witness the instructions to the *citizen-initiated*
13 grand jury regarding its conduct and deliberations pursuant to subsection
14 (c)(4).

15 Sec. 2. K.S.A. 2021 Supp. 22-3008 is hereby amended to read as
16 follows: 22-3008. (a) (1) Whenever required by any grand jury, its
17 presiding juror or the prosecuting attorney, the clerk of the court in which
18 the jury is impaneled shall issue subpoenas and other process to bring
19 witnesses to testify before the grand jury. ~~The person who filed the petition~~

20 (2) *If a citizen-initiated grand jury is impaneled pursuant to K.S.A.*
21 *22-3001(c), and amendments thereto, the person who filed the citizen-*
22 *initiated petition and whose name, address and phone number appear on*
23 *the face of each petition shall be the first witness called by the citizen-*
24 *initiated grand jury for the purpose of presenting evidence and testimony*
25 *as to the subject matter and allegations of the such petition.*

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

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

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

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

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

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

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

22 (3) No immunity shall be granted for perjury as provided in K.S.A.
23 2021 Supp. 21-5903, and amendments thereto, ~~which~~ *that* was committed
24 in giving such evidence.

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

29 (g) Any person may file a written request with the prosecuting
30 attorney or with the ~~foreman~~ *foreperson* of the grand jury and request to
31 testify or retestify in an inquiry before a grand jury or to appear before a
32 grand jury. Any written request shall include a summary of such person's
33 written testimony.

34 Sec. 3. K.S.A. 2021 Supp. 22-3001 and 22-3008 are hereby repealed.

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