

As Amended by House Committee

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 subject matter of the*
26 *prospective grand jury, a reasonably specific identification of areas to be*
27 *inquired into and sufficient general allegations to warrant a finding that*
28 *such inquiry may lead to information which, if true, would warrant a true*
29 *bill of indictment.*

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

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

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

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

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

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

39 **(C) You may, with the approval of this court, employ special**
40 **counsel and investigators, and incur such other expense for services**
41 **and supplies as you and this court deem necessary. Any special counsel**
42 **or investigator you employ shall be selected by a majority vote of your**
43 **grand jury. You may make such selection only after hearing testimony**

1 from the person who filed the citizens' petition. You may utilize the
2 services of any special counsel or investigator you employ instead of,
3 or in addition to, the services of the prosecuting attorney.

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

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

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

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

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

26 Sec. 2. K.S.A. 22-3002 is hereby amended to read as follows: 22-
27 3002. (1) The prosecuting attorney may challenge the array of jurors on
28 the ground that the grand jury was not selected, drawn or summoned in
29 accordance with law, and may challenge an individual juror on the ground
30 that the juror is not legally qualified. Challenges by the state shall be made
31 before the administration of the oath to the jurors and shall be tried by the
32 court.

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

40 (3) *After the prosecutor has conducted an examination of the*
41 *prospective grand jurors under this section, a list of all remaining legally*
42 *qualified grand jurors shall be approved by the court and submitted to the*
43 *clerk of the county of such court for a second drawing of grand juror*

1 *names pursuant to K.S.A. 43-107, and amendments thereto.*

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

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

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

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

30 (2) 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) If any witness appearing before a grand jury refuses to testify or
36 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) No witness before a grand jury shall be required to incriminate the
42 witness' self.

43 (5) (a) The county or district attorney, or the attorney general, at any

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

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

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

29 (6) 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 ~~(7) Any person may approach the prosecuting attorney or the grand
34 jury and request to testify or retestify in an inquiry before a grand jury or
35 to appear before a grand jury. The prosecuting attorney or the grand jury
36 shall keep a record of all denials of such requests to that prosecuting
37 attorney or grand jury, including the reasons for not allowing such person
38 to testify or appear. If the person making such request is dissatisfied with
39 the decision of the prosecuting attorney or the grand jury, such person
40 may petition the court for hearing on the denial by the prosecuting
41 attorney or the grand jury. If the court grants the hearing, then the court
42 may permit the person to testify or appear before the grand jury, if the
43 court finds that such testimony or appearance would serve the interests of~~

1 *justice.*

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

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

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

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

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

1 be legally sufficient, the case shall be assigned to another judge.

2 (e) ~~Grounds which may be alleged as provided in subsection (b) for~~
3 ~~change of judge are that:~~

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

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

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

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

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

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

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

23 **New Sec. 6. (a) Upon a majority vote of the grand jury, the grand**
24 **jury may seek the removal of the assigned judge pursuant to K.S.A.**
25 **20-311d, and amendments thereto.**

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

29 Sec. 7. K.S.A. 22-3002 and 22-3006 and K.S.A. 2012 Supp. 22-3001,
30 22-3008 and 43-107 are hereby repealed.

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