

SENATE BILL No. 310

By Committee on Judiciary

1-27

1 AN ACT concerning grand juries; amending K.S.A. 2013 Supp. 22-3001,
2 **22-3011** and 22-3015 and repealing the existing sections.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2013 Supp. 22-3001 is hereby amended to read as
6 follows: 22-3001. (a) A majority of the district judges in any judicial
7 district may order a grand jury to be summoned in any county in the
8 district when it is determined to be in the public interest.

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

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

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

1 bill of indictment.

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

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

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

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

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

43 (B) The person filing the citizens' petition filed in this court must be

1 the first witness you call for the purpose of presenting evidence and
2 testimony as to the subject matter and allegations of the petition.

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

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

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

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

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

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

33 ***Sec. 2. K.S.A. 2013 Supp. 22-3011 is hereby amended to read as***
34 ***follows: 22-3011. (a) An indictment may be found only on the***
35 ***concurrence of 12 or more grand jurors. When an indictment is found,***
36 ***the presiding juror shall endorse thereon "a true bill" and shall sign the***
37 ***presiding juror's name as presiding juror.***

38 ***(b) When 12 or more grand jurors do not concur in finding an***
39 ***indictment, the presiding juror shall certify that the indictment is "not a***
40 ***true bill."***

41 ***(c) Indictments found by the grand jury shall be presented by its***
42 ***presiding juror, in the jury's presence, to the court and shall be filed and***
43 ***remain as records of the court.***

1 (d) *A grand jury impaneled pursuant to subsection (c) of K.S.A. 22-*
2 *3001, and amendments thereto, may request that the attorney general*
3 *prosecute the case arising from an indictment found by such grand jury if,*
4 *in the opinion of the grand jury, the prosecuting attorney would not*
5 *diligently prosecute such case. ~~The attorney general shall prosecute such~~*
6 *case unless the attorney general finds that there is not probable cause to
7 *believe that a crime has been committed or that the defendant has*
8 *committed such crime.* ***The court shall notify the attorney general of such***
9 ***request and the attorney general may prosecute such case.****

10 Sec.-2- 3. K.S.A. 2013 Supp. 22-3015 is hereby amended to read as
11 follows: 22-3015. (a) *Matters of form, time, place, names.* At any time
12 before or during trial, the court may, upon application of the people and
13 with notice to the defendant and opportunity for the defendant to be heard,
14 order the amendment of an indictment with respect to defects, errors or
15 variances from the proof relating to matters of form, time, place and names
16 of persons when such amendment does not change the substance of the
17 charge, and does not prejudice the defendant on the merits. Upon ordering
18 an amendment, the court, for good cause shown, may grant a continuance
19 to provide the defendant adequate opportunity to prepare a defense.

20 (b) *Prohibition as to matters of substance, exception.*

21 (1) An indictment shall not be amended as to the substance of the
22 offense charged, ~~except that as provided further.~~

23 (2) *The court may, upon application of the people and with notice to*
24 *the defendant and opportunity for the defendant to be heard, order the*
25 ~~*amendment of an indictment*~~ ***substance of an indictment to be amended***
26 ***for the limited purpose of effecting a change of plea by the defendant***
27 ***pursuant to a plea agreement reached between the defendant and the***
28 ***prosecuting attorney. The provisions of this paragraph shall apply only to***
29 ***an indictment found by a grand jury impaneled pursuant to subsection***
30 ***(a) or (b) of K.S.A. 22-3001, and amendments thereto, and shall not***
31 ***apply to an indictment found by a grand jury impaneled pursuant to***
32 ***subsection (c) of K.S.A. 22-3001, and amendments thereto.***

33 (c) This section shall be part of and supplemental to article 30 of
34 chapter 22 of the Kansas Statutes Annotated, and amendments thereto.

35 Sec.-3- 4. K.S.A. 2013 Supp. 22-3001, ~~22-3011~~ and 22-3015 are
36 hereby repealed.

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