

HOUSE BILL No. 2529

By Committee on Judiciary

Requested by Representative Lewis on behalf of Phillip Cosby

1-23

1 AN ACT concerning criminal procedure; relating to grand juries;
2 modifying procedures for the citizen petition process to impanel a
3 citizen grand jury; providing for judicial review of such petitions prior
4 to obtaining signatures; creating a misdemeanor crime for knowingly
5 making a false statement or offering any benefit as consideration to
6 induce a person to sign or remove a signature from such petitions;
7 limiting criminal liability for good faith conduct by the person who
8 initiates such petitions and any person who signs such petitions;
9 prohibiting diversion agreements related to a true bill of indictment
10 found by a citizen grand jury; amending K.S.A. 22-2909, 22-3001, 22-
11 3002, 22-3005, 22-3007, 22-3008, 22-3011 and 22-3015 and repealing
12 the existing sections.
13

14 WHEREAS, A citizen grand jury by petition serves as an independent,
15 legal pathway and direct mechanism for ordinary citizens to seek a formal
16 criminal investigation when they believe that public officials, institutions
17 or prosecutorial authorities are failing or unwilling to properly address
18 wrongdoing; and

19 WHEREAS, The citizen grand jury by petition process is designed to
20 ensure access to justice even when traditional systems may not respond
21 and to give people a constitutional and statutory tool to ensure that
22 allegations of serious misconduct receive a fair hearing, even if those in
23 power resist investigation; and

24 WHEREAS, Thomas Jefferson wrote "I know no safe depository of the
25 ultimate powers of the society, but the people themselves: and if we think
26 them not enlightened enough to exercise their controul with a wholesome
27 discretion, the remedy is, not to take it from them, but to inform their
28 discretion by education."

29 Now, therefore:

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

31 Section 1. K.S.A. 22-3001 is hereby amended to read as follows: 22-
32 3001. (a) *Grand jury by judiciary.* A majority of the district judges in any
33 judicial district may order a grand jury to be summoned in any county in
34 the district when it is determined to be in the public interest.

35 (b) *Grand jury by prosecuting attorney.* The district or county

1 attorney in such attorney's county may petition the chief judge or the chief
2 judge's designee in such district court to order a grand jury to be
3 summoned in the designated county in the district to consider any alleged
4 felony law violation, including any alleged misdemeanor law violation
5 ~~which~~ *that* arises as part of the same criminal conduct or investigation. The
6 attorney general in any judicial district may petition the chief judge or the
7 chief judge's designee in such judicial district to order a grand jury to be
8 summoned in the designated county in the district to consider any alleged
9 felony law violation, including any alleged misdemeanor law violation
10 ~~which~~ *that* arises as part of the same criminal conduct or investigation, if
11 authorized by the district or county attorney in such judicial district or if
12 jurisdiction is otherwise authorized by law. The chief judge or the chief
13 judge's designee in the district court of the county shall then consider the
14 petition and, if it is found that the petition is in proper form, as set forth in
15 this subsection, shall order a grand jury to be summoned within 15 days
16 after receipt of such petition.

17 (c) *Citizen grand jury by petition.* (1) A grand jury shall be
18 summoned in any county within 60 days after a *citizen* petition ~~praying~~
19 ~~therefor described in this subsection~~ is presented to the district court,
20 bearing the signatures of a number of electors equal to 100 plus 2% of the
21 total number of votes cast for governor in the county in the last preceding
22 election.

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

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

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

36 (B) (i) *Any person or organization that intends to circulate a citizen*
37 *petition as provided in this subsection shall file a copy of such petition*
38 *with the clerk of the district court prior to obtaining any signatures on*
39 *such petition.*

40 (ii) *Within five days immediately following the date of such filing,*
41 *excluding Saturdays, Sundays and legal holidays, a judge of the district*
42 *court of the county shall enter an order stating whether the petition, upon*
43 *its face, meets the requirements described in subsection (c)(2). If the judge*

1 *finds that such petition is deficient in any manner, the order shall set forth*
2 *each deficiency found by the judge and allow the person or organization*
3 *who filed such petition to file an amended petition within five days*
4 *immediately following the date of such order, excluding Saturdays,*
5 *Sundays and legal holidays. Within five days immediately following the*
6 *date of filing an amended petition, excluding Saturdays, Sundays and legal*
7 *holidays, a judge of the district court of the county shall enter an order*
8 *stating whether the petition, upon its face, meets the requirements*
9 *described in subsection (c)(2). If the judge finds that such petition is*
10 *deficient in any manner, the order shall quash such petition and set forth*
11 *each deficiency found by the judge. If the judge finds that the citizen*
12 *petition or the amended petition is sufficient and meets the requirements*
13 *described in subsection (c)(2), the petition may be circulated for*
14 *signatures.*

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

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

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

1 (4) *A person shall not knowingly make a false statement or offer any*
2 *benefit as consideration to induce a person to sign a citizen petition or*
3 *remove a signature from a citizen petition. Violation of this paragraph is a*
4 *class C nonperson misdemeanor.*

5 (5) After a *citizen grand jury by petition* is summoned pursuant to this
6 subsection, but before it begins deliberations, the judge or judges of the
7 district court of the county ~~in which the~~ *where such* petition is presented
8 shall provide instructions to ~~the such~~ grand jury regarding ~~its such grand~~
9 *jury's* conduct and deliberations, which ~~instructions~~ shall include, but not
10 be limited to, the following:

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

21 (B) The person ~~filing the citizens' petition filed~~ *who filed the citizen*
22 *petition* in this court must be the first witness you call for the purpose of
23 presenting evidence and testimony as to the subject matter and allegations
24 of ~~the such~~ petition.

25 (C) You may, with the approval of this court, employ special counsel
26 and investigators, and incur such other expense for services and supplies
27 as you and this court deem necessary. Any special counsel or investigator
28 you employ shall be selected by a majority vote of your *citizen grand jury*
29 *by petition*. You may make such selection only after hearing testimony
30 from the *initiating* person who filed the ~~citizens'~~ *citizen* petition. You may
31 utilize the services of any special counsel or investigator you employ
32 instead of, or in addition to, the services of the prosecuting attorney.

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

36 (E) If any witness appearing before you refuses to testify or to answer
37 any questions asked in the course of the witness' examination, you shall
38 communicate that fact to this court in writing, together with a statement
39 regarding the question *that* the witness refuses to answer. This court will
40 determine and inform you of whether the witness is bound to answer or
41 not. However, no witness appearing before you can be compelled to make
42 any statement ~~which that~~ will incriminate such witness.

43 (F) Any person may file a written request with the ~~prosecuting~~

1 ~~attorney or with the foreman of the grand jury foreperson~~ and request to
2 testify or retestify in an inquiry before ~~a grand jury you~~ or to appear before
3 ~~a grand jury you~~. Any written request shall include a summary of such
4 person's written testimony.

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

7 (6) (A) *The initiating person shall be the first witness called by the*
8 *grand jury and shall present evidence and testimony as to the subject*
9 *matter and allegations of the such petition.*

10 (B) *No prosecuting attorney shall be present before the initiating*
11 *person is called as the first witness and completes their testimony.*

12 (C) *The grand jury may, with the approval of the court, employ*
13 *special counsel and investigators by a majority vote of such grand jury*
14 *only after the initiating person is called as the first witness and completes*
15 *such person's testimony.*

16 (7) *The initiating person and any person who signs a citizen petition*
17 *shall have presumptive immunity and shall not be subject to criminal*
18 *prosecution for any good faith conduct related to a citizen petition or a*
19 *citizen grand jury by petition pursuant to this article.*

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

26 (e) (1) ~~In the case of grand juries~~ If a citizen grand jury by petition is
27 impaneled pursuant to subsection (c), the judge or judges ordering ~~the~~
28 ~~such~~ grand jury shall allow the initiating person ~~that filed the petition~~
29 ~~under the provisions of subsection (c)(2),~~ and such person's attorney, to
30 witness the instructions to ~~the such~~ grand jury regarding ~~its such~~ grand
31 jury's conduct and deliberations pursuant to subsection ~~(e)(4)~~ (c)(5).

32 (2) *If a citizen petition is filed pursuant to subsection (c) and such*
33 *petition is quashed or a citizen grand jury by petition is not summoned or*
34 *impaneled because of a finding that such petition, substantially in the form*
35 *required by subsection (c) on its face, is not in proper form, the initiating*
36 *person shall have the right to appeal such decision as a final judgment*
37 *pursuant to K.S.A. 22-3601, and amendments thereto.*

38 (3) *If a court decides an issue related to the procedures or*
39 *management of a citizen grand jury by petition that the initiating person*
40 *alleges is contrary to law, including, but not limited to, a decision to*
41 *employ any special counsel or investigator prior to selection by a majority*
42 *vote of such grand jury after hearing testimony from the initiating person*
43 *as required by K.S.A. 22-3006, and amendments thereto, the initiating*

1 *person shall have the right to appeal such decision as a final judgment*
2 *pursuant to K.S.A. 22-3601, and amendments thereto, upon completion of*
3 *such grand jury's investigation as provided in K.S.A. 22-3013, and*
4 *amendments thereto.*

5 *(f) As used in this section, "initiating person" means the person who*
6 *files a citizen petition described in subsection (c) and whose name,*
7 *address and phone number appear on the face of such petition.*

8 Sec. 2. K.S.A. 22-3002 is hereby amended to read as follows: 22-
9 3002. (a) *(1) Except as provided further,* the prosecuting attorney may
10 challenge the array of jurors on the ground that the grand jury was not
11 selected, drawn or summoned in accordance with law; and may challenge
12 an individual juror on the ground that the juror is not legally qualified.
13 Challenges by the state shall be made before the administration of the oath
14 to the jurors and shall be tried by the court.

15 *(2) Within 10 days after a citizen petition is filed with a court*
16 *pursuant to K.S.A. 22-3001(c), and amendments thereto, the initiating*
17 *person as defined in K.S.A. 22-3001, and amendments thereto, shall*
18 *submit the names of three attorneys licensed to practice law in Kansas to*
19 *the court. If a citizen grand jury by petition is impaneled pursuant to*
20 *K.S.A. 22-3001(c), and amendments thereto, the court shall select one of*
21 *such attorneys, instead of the prosecuting attorney, and such attorney may*
22 *challenge the array of jurors on the ground that the grand jury was not*
23 *selected, drawn or summoned in accordance with law and may challenge*
24 *an individual juror on the ground that the juror is not legally qualified.*
25 *Such challenges shall be made before the administration of the oath to the*
26 *jurors and shall be tried by the court.*

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

34 (c) ~~After the prosecutor has conducted an~~ examination of the
35 prospective grand jurors under this section, a list of all remaining legally
36 qualified grand jurors shall be approved by the court and submitted to the
37 clerk of the court of such county for a second drawing of grand juror
38 names pursuant to K.S.A. 43-107, and amendments thereto.

39 Sec. 3. K.S.A. 22-3005 is hereby amended to read as follows: 22-
40 3005. (a) *(1) When a grand jury is impaneled and sworn, it such grand*
41 *jury shall be charged by the judge who summoned it such grand jury.* In so
42 doing, the judge shall give the grand jurors such information as the judge
43 deems proper and as is required by law, as to their duties, and as to any

1 charges of crimes known to the court and likely to come before the grand
2 jury.

3 (2) *When a citizen grand jury by petition is impaneled pursuant to*
4 *K.S.A. 22-3001(c), and amendments thereto, and sworn, the initiating*
5 *person as defined in K.S.A. 22-3001, and amendments thereto, and such*
6 *person's attorney, shall be allowed to witness the information and*
7 *instructions given to such grand jury pursuant to this subsection.*

8 (b) ~~When the~~ *a grand jury has been impaneled, sworn and charged, it*
9 *such grand jury shall retire to a private room; and inquire into the crimes*
10 *cognizable by it such grand jury.*

11 Sec. 4. K.S.A. 22-3007 is hereby amended to read as follows: 22-
12 3007. (a) In the case of ~~grand juries~~ *a grand jury by judiciary* impaneled
13 pursuant to ~~subsection (a) or (c)~~ of K.S.A. 22-3001(a), and amendments
14 thereto, the prosecuting attorney shall:

15 (1) When requested by ~~any~~ *a majority vote of the* grand jury, attend
16 sessions thereof for the purpose of examining witnesses or giving the
17 grand jury advice upon any legal matter; and

18 (2) upon such attorney's request, be permitted to appear before the
19 grand jury for the purpose of giving information relative to any matter
20 cognizable by the grand jury, and may be permitted to interrogate
21 witnesses if the grand jury deems ~~it~~ *such interrogation necessary by a*
22 *majority vote.*

23 (b) In the case of ~~grand juries~~ *a grand jury by prosecuting attorney*
24 impaneled pursuant to ~~subsection (b)~~ of K.S.A. 22-3001(b), and
25 amendments thereto, the prosecuting attorney shall:

26 (1) Attend all sessions thereof and inform the grand jury of all
27 offenses liable to indictment and evidence of which will be presented to
28 them for consideration;

29 (2) present witnesses and examine such witnesses on all matters to be
30 considered by the grand jury; and

31 (3) give the grand jury advice upon all questions related to the proper
32 discharge of ~~their~~ *such grand jury's* duties.

33 (c) *In the case of a citizen grand jury by petition impaneled pursuant*
34 *to K.S.A. 22-3001(c), and amendments thereto, the prosecuting attorney:*

35 (1) *Shall, when requested by a majority vote of the grand jury, attend*
36 *sessions thereof for the purpose of examining witnesses or giving the*
37 *grand jury advice upon any legal matter; and*

38 (2) *may, upon such attorney's request and if the grand jury deems it*
39 *necessary by a majority vote, be permitted to:*

40 (A) *Appear before the grand jury for the purpose of giving*
41 *information relative to any matter cognizable by the grand jury; and*

42 (B) *interrogate witnesses.*

43 Sec. 5. K.S.A. 22-3008 is hereby amended to read as follows: 22-

1 3008. (a) (1) Whenever required by any grand jury, ~~its~~ *such grand jury's*
2 presiding juror or the prosecuting attorney, the clerk of the court in which
3 the jury is impaneled shall issue subpoenas and other process to bring
4 witnesses to testify before the grand jury. ~~The person who filed the petition~~

5 (2) *In the case of a citizen grand jury by petition impaneled pursuant*
6 *to K.S.A. 22-3001(c), and amendments thereto, the initiating person as*
7 *defined in K.S.A. 22-3001, and amendments thereto,* shall be the first
8 witness called by ~~the~~ *such* grand jury for the purpose of presenting
9 evidence and testimony as to the subject matter and allegations of the
10 *citizen* petition.

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

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

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

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

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

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

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

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

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

14 (g) *(1) In the case of a grand jury by judiciary impaneled pursuant to*
15 *K.S.A. 22-3001(a), and amendments thereto, or a grand jury by*
16 *prosecuting attorney impaneled pursuant to K.S.A. 22-3001(b), and*
17 *amendments thereto, any person may file a written request with the*
18 *prosecuting attorney or with the foreman, foreperson of the grand jury and*
19 *request to testify or retestify in an inquiry before a the grand jury or to*
20 *appear before a the grand jury.*

21 *(2) In the case of a citizen grand jury by petition impaneled pursuant*
22 *to K.S.A. 22-3001(c), and amendments thereto, any person may file a*
23 *written request with the foreperson of the grand jury and request to testify*
24 *or retestify in an inquiry before the grand jury or to appear before the*
25 *grand jury.*

26 (3) Any written request shall include a summary of such person's
27 written testimony.

28 Sec. 6. K.S.A. 22-3011 is hereby amended to read as follows: 22-
29 3011. (a) An indictment may be found only on the concurrence of 12 or
30 more grand jurors. When an indictment is found, the presiding juror shall
31 endorse thereon "a true bill" and shall sign the presiding juror's name as
32 presiding juror or sign the indictment "Presiding Grand Juror."

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

36 (c) Indictments found by the grand jury shall be presented by ~~its~~ *such*
37 *grand jury's* presiding juror, in the jury's presence, to the court and shall be
38 filed and remain as records of the court.

39 (d) *(1) A If an indictment is found by a citizen grand jury by petition*
40 *impaneled pursuant to K.S.A. 22-3001(c), and amendments thereto, within*
41 *30 days after such indictment is found, the prosecuting attorney shall*
42 *notify the court and the presiding juror, in writing, of the prosecuting*
43 *attorney's decision to prosecute the case arising from such indictment. If*

1 *the prosecuting attorney notifies the court and the presiding juror that the*
2 *decision is to not prosecute the case, or the prosecuting attorney fails to*
3 *notify the court and the presiding juror as required by this subsection, the*
4 *court shall summon and reconvene the grand jury within 30 days after*
5 *such occurrence. The grand jury may, by a majority vote, request that the*
6 *attorney general prosecute the case arising from such indictment.*

7 (2) *Notwithstanding the provisions of subsection (d)(1), the citizen*
8 *grand jury may, by a majority vote, request that the attorney general*
9 *prosecute the case arising from an indictment found by such grand jury if,*
10 *in the opinion of a majority of the grand jury, the prosecuting attorney*
11 *would not diligently prosecute such case.*

12 (3) *If a majority of a citizen grand jury votes to request that the*
13 *attorney general prosecute the case arising from an indictment found by*
14 *such grand jury pursuant to this subsection, the court shall notify the*
15 *attorney general of such request and the attorney general may prosecute*
16 *such case.*

17 (4) *Notwithstanding any other provision of law, the attorney general*
18 *and any county or district attorney shall not enter into a diversion*
19 *agreement related to a true bill of indictment found by a citizen grand jury*
20 *impaneled pursuant to K.S.A. 22-3001(c), and amendments thereto.*

21 Sec. 7. K.S.A. 22-3015 is hereby amended to read as follows: 22-
22 3015. (a) *Matters of form, time, place, names.* At any time before or during
23 trial, the court may, upon application of the prosecuting attorney and with
24 notice to the defendant and opportunity for the defendant to be heard,
25 order the amendment of an indictment with respect to defects, errors or
26 variances from the proof relating to matters of form, time, place and names
27 of persons ~~when~~ *if* such amendment does not change the substance of the
28 charge; and does not prejudice the defendant on the merits. Upon ordering
29 an amendment, the court, for good cause shown, may grant a continuance
30 to provide the defendant adequate opportunity to prepare a defense.

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

32 (1) An indictment shall not be amended as to the substance of the
33 offense charged, except as provided further.

34 (2) The court may, upon application of the prosecuting attorney and
35 with notice to the defendant and opportunity for the defendant to be heard,
36 order the substance of an indictment to be amended for the limited purpose
37 of effecting a change of plea by the defendant pursuant to a plea agreement
38 reached between the defendant and the prosecuting attorney. The
39 provisions of this paragraph shall apply only to an indictment found by a
40 grand jury impaneled pursuant to K.S.A. 22-3001(a) or (b), and
41 amendments thereto, and shall not apply to an indictment found by a
42 *citizen grand jury by petition* impaneled pursuant to K.S.A. 22-3001(c),
43 and amendments thereto.

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

3 Sec. 8. K.S.A. 22-2909 is hereby amended to read as follows: 22-
4 2909. (a) (1) A diversion agreement shall provide that if the defendant
5 fulfills the obligations of the program described therein, as determined by
6 the attorney general or county or district attorney, such attorney shall act to
7 have the criminal charges against the defendant dismissed with prejudice.
8 The diversion agreement shall include specifically the waiver of all rights
9 under the law or the constitution of Kansas or of the United States to a
10 speedy arraignment, preliminary examinations and hearings; and a speedy
11 trial; and, in the case of diversion under subsection (c), waiver of the rights
12 to counsel and trial by jury. The diversion agreement may include, but is
13 not limited to, provisions concerning:

14 (A) Payment of restitution, including court costs and diversion costs;

15 (B) residence in a specified facility;

16 (C) maintenance of gainful employment;

17 (D) participation in programs offering medical, educational,
18 vocational, social and psychological services, corrective and preventive
19 guidance and other rehabilitative services; and

20 (E) supervision by the county or district attorney, or by court services
21 or community correctional services pursuant to a memorandum of
22 understanding entered into by the county or district attorney pursuant to
23 K.S.A. 22-2907, and amendments thereto, including the diversion
24 supervision fee and urinalysis costs described in K.S.A. 22-2907, and
25 amendments thereto, when applicable.

26 (2) If a county creates a local fund under the property crime
27 restitution and compensation act, a county or district attorney may require
28 in all diversion agreements as a condition of diversion the payment of a
29 diversion fee in an amount not to exceed \$100. Such fees shall be
30 deposited into the local fund and disbursed pursuant to recommendations
31 of the local board under the property crime restitution and victims
32 compensation act.

33 (3) If the attorney general enters into a diversion agreement:

34 (A) Any diversion costs or fees collected pursuant to such agreement
35 shall be deposited in the fraud and abuse criminal prosecution fund
36 established by K.S.A. 75-765, and amendments thereto; and

37 (B) the attorney general may enter into agreements with the
38 appropriate county or district attorney or other appropriate parties
39 regarding the supervision of conditions of such diversion agreement.

40 (b) The diversion agreement shall state:

41 (1) The defendant's full name;

42 (2) the defendant's full name at the time the complaint was filed, if
43 different from the defendant's current name;

- 1 (3) the defendant's sex, race and date of birth;
- 2 (4) the crime with which the defendant is charged;
- 3 (5) the date the complaint was filed; and
- 4 (6) the district court with which the agreement is filed.

5 (c) If a diversion agreement is entered into in lieu of further criminal
6 proceedings on a complaint alleging a violation of K.S.A. 8-1567, and
7 amendments thereto, the diversion agreement shall include a stipulation,
8 agreed to by the defendant, the defendant's attorney if the defendant is
9 represented by an attorney and the attorney general or county or district
10 attorney, of the facts upon which the charge is based and a provision that if
11 the defendant fails to fulfill the terms of the specific diversion agreement
12 and the criminal proceedings on the complaint are resumed, the
13 proceedings, including any proceedings on appeal, shall be conducted on
14 the record of the stipulation of facts relating to the complaint. In addition,
15 the agreement shall include a requirement that the defendant:

16 (1) Pay a fine specified by the agreement in an amount equal to an
17 amount authorized by K.S.A. 8-1567, and amendments thereto, for a first
18 offense or, in lieu of payment of the fine, perform community service
19 specified by the agreement, in accordance with K.S.A. 8-1567, and
20 amendments thereto; and

21 (2) participate in an alcohol and drug evaluation conducted by a
22 licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and
23 follow any recommendation made by the provider after such evaluation.

24 (d) If a diversion agreement is entered into in lieu of further criminal
25 proceedings on a complaint alleging a domestic violence offense, as
26 defined in K.S.A. 21-5111, and amendments thereto, the diversion
27 agreement shall include a requirement that the defendant undergo a
28 domestic violence offender assessment and follow all recommendations
29 unless otherwise agreed to with the prosecutor in the diversion agreement.
30 The defendant shall be required to pay for such assessment and, unless
31 otherwise agreed to with the prosecutor in the diversion agreement, for
32 completion of all recommendations.

33 (e) If a diversion agreement is entered into in lieu of further criminal
34 proceedings on a complaint alleging a violation other than K.S.A. 8-1567,
35 and amendments thereto, the diversion agreement may include a
36 stipulation, agreed to by the defendant, the defendant's attorney if the
37 defendant is represented by an attorney and the attorney general or county
38 or district attorney, of the facts upon which the charge is based and a
39 provision that if the defendant fails to fulfill the terms of the specific
40 diversion agreement and the criminal proceedings on the complaint are
41 resumed, the proceedings, including any proceedings on appeal, shall be
42 conducted on the record of the stipulation of facts relating to the
43 complaint.

1 (f) If the person entering into a diversion agreement is a nonresident,
2 the attorney general or county or district attorney shall transmit a copy of
3 the diversion agreement to the division. The division shall forward a copy
4 of the diversion agreement to the motor vehicle administrator of the
5 person's state of residence.

6 (g) If the attorney general or county or district attorney elects to offer
7 diversion in lieu of further criminal proceedings on the complaint and the
8 defendant agrees to all of the terms of the proposed agreement, the
9 diversion agreement shall be filed with the district court and the district
10 court shall stay further proceedings on the complaint. If the defendant
11 declines to accept diversion, the district court shall resume the criminal
12 proceedings on the complaint.

13 (h) Except as provided in subsection (i), if a diversion agreement is
14 entered into in lieu of further criminal proceedings alleging commission of
15 a misdemeanor by the defendant, while under 21 years of age, under
16 K.S.A. 21-5701 through 21-5717, and amendments thereto, or K.S.A. 41-
17 719, 41-727, 41-804, 41-2719 or 41-2720, and amendments thereto, the
18 agreement shall require the defendant to participate in an alcohol and drug
19 evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008,
20 and amendments thereto, and follow any recommendation made by the
21 provider after such evaluation.

22 (i) If the defendant is 18 or more years of age but less than 21 years
23 of age and allegedly committed a violation of K.S.A. 41-727, and
24 amendments thereto, involving cereal malt beverage, the provisions of
25 subsection (h) are permissive and not mandatory.

26 (j) If a diversion agreement is entered into in lieu of further criminal
27 proceedings on a complaint alleging a violation of K.S.A. 21-6421, and
28 amendments thereto, the agreement:

29 (1) Shall include a requirement that the defendant pay a fine specified
30 by the agreement in an amount equal to an amount authorized by K.S.A.
31 21-6421, and amendments thereto; and

32 (2) may include a requirement that the defendant enter into and
33 complete a suitable educational or treatment program regarding
34 commercial sexual exploitation.

35 (k) *Notwithstanding any other provision of law, the attorney general*
36 *and any county or district attorney shall not enter into a diversion*
37 *agreement related to a true bill of indictment found by a citizen grand jury*
38 *impaneled pursuant to K.S.A. 22-3001(c), and amendments thereto.*

39 (l) Except for diversion agreements reported under subsection ~~(h)~~ (m),
40 the attorney general or county or district attorney shall forward to the
41 Kansas bureau of investigation a copy of the diversion agreement at the
42 time such agreement is filed with the district court. The copy of the
43 agreement shall be made available upon request to the attorney general or

1 any county, district or city attorney or court.

2 ~~(b)~~(m) At the time of filing the diversion agreement with the district
3 court, the attorney general or county or district attorney shall forward to
4 the division of vehicles of the state department of revenue a copy of any
5 diversion agreement entered into in lieu of further criminal proceedings on
6 a complaint alleging a violation of K.S.A. 8-1567, and amendments
7 thereto. The copy of the agreement shall be made available upon request to
8 the attorney general or any county, district or city attorney or court.

9 Sec. 9. K.S.A. 22-2909, 22-3001, 22-3002, 22-3005, 22-3007, 22-
10 3008, 22-3011 and 22-3015 are hereby repealed.

11 Sec. 10. This act shall take effect and be in force from and after its
12 publication in the statute book.