

Substitute for HOUSE BILL No. 2151

AN ACT concerning crimes, punishment and criminal procedure; relating to sentencing, early release from incarceration; eyewitness identification; grand juries; summoning; jury instructions; witnesses; amending K.S.A. 2015 Supp. 22-3001 and repealing the existing section.

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

New Section 1. (a) The secretary of corrections may transfer an offender from a correctional facility to home detention in the community if the secretary determines that community parenting release is an appropriate placement and:

(1) The offender is serving a current sentence for a nondrug severity level 4 through 10 felony or a drug severity level 3 through 5 felony and is determined to be low, low-moderate or moderate risk on a standardized risk assessment tool;

(2) the offender has no prior or current conviction for a sex offense or an inherently dangerous felony as defined in K.S.A. 2015 Supp. 21-5402, and amendments thereto, not including a drug severity level 3 through 5 felony;

(3) the offender has not been found by the United States attorney general to be subject to a deportation detainer or order;

(4) the offender signs any release of information waivers required to allow information regarding current or prior child in need of care cases involving the offender to be shared with the department of corrections;

(5) the offender had physical custody of such offender's minor child or was a legal guardian or custodian with physical custody of a minor child at the time the offense for which the offender is serving a sentence was committed;

(6) the offender has 12 months or less remaining of the offender's sentence; and

(7) the secretary of corrections determines that such placement is in the best interests of the child.

(b) Prior to transferring an offender from a correctional facility to home detention pursuant to this section, the secretary of corrections shall obtain information from the department for children and families regarding any child in need of care case involving the offender. Such information shall be used by the secretary of corrections in determining whether placing an offender in community parenting release is in the best interests of the child.

(c) Offenders placed on community parenting release shall provide to the secretary of corrections an approved residence and living arrangement prior to transfer to home detention.

(d) The secretary of corrections shall:

(1) Require offenders placed on community parenting release to:

(A) Comply with the provisions of K.S.A. 21-6609, and amendments thereto; and

(B) participate in programming and treatment that the secretary determines is needed; and

(2) assign a parole officer to monitor the offender's compliance with conditions of community parenting release.

(e) The secretary of corrections has the authority to return any offender serving the remainder of such offender's sentence on community parenting release to a correctional facility if the offender is not complying with community parenting release requirements.

New Sec. 2. (a) All law enforcement agencies in this state shall adopt a detailed, written policy relating to the procedures to be employed when a citizen is asked to identify a person in the context of a criminal investigation.

(b) All law enforcement agencies in this state shall collaborate with the county or district attorney in the appropriate jurisdiction to adopt written policies regarding eyewitness procedures. Such policies shall be made available to all officers of such agency.

(c) Policies adopted pursuant to this section shall be implemented by all Kansas law enforcement agencies within two years after the effective date of this act. Such policies shall be available for public inspection during normal business hours.

(d) The policies adopted pursuant to this section shall include, but not be limited to, identifying the procedures the law enforcement agency should employ when asking a citizen to identify a person in the context of a criminal investigation. The procedures should include:

- (1) Use of blind and blinded procedures;
- (2) instructions to the witness that the perpetrator may or may not be present;
- (3) use of non-suspect fillers who are reasonably similar to the perpetrator and do not make the suspect stand out; and
- (4) after an identification is made by the witness, eliciting a confidence statement, in the witness's own words, regarding the level of certainty in the selection.

Sec. 3. K.S.A. 2015 Supp. 22-3001 is hereby amended to read as follows: 22-3001. (a) A majority of the district judges in any judicial district may order a grand jury to be summoned in any county in the district when it is determined to be in the public interest.

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

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

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

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

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

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

(4) After a grand jury is summoned pursuant to this subsection, but before it begins deliberations, the judge or judges of the district court of

the county in which the petition is presented shall provide instructions to the grand jury regarding its conduct and deliberations, which instructions shall include, but not be limited to, the following:

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

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

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

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

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

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

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

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

Sec. 4. K.S.A. 2015 Supp. 22-3001 is hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

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HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*