

22-3008. Witnesses; immunity. (a) Whenever required by any grand jury, its presiding juror or the prosecuting attorney, the clerk of the court in which the jury is impaneled shall issue subpoenas and other process to bring witnesses to testify before the grand jury. The person who filed the petition pursuant to K.S.A. 22-3001, and amendments thereto, shall be the first witness called by the grand jury for the purpose of presenting evidence and testimony as to the subject matter and allegations of the petition.

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

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

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

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

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

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

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

(3) No immunity shall be granted for perjury as provided in K.S.A. 2014 Supp. 21-5903, and amendments thereto, which was committed in giving such evidence.

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

(g) 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.

History: L. 1970, ch. 129, § 22-3008; L. 1976, ch. 163, § 13; L. 1984, ch. 112, § 19; L. 1986, ch. 115, § 62; L. 1999, ch. 56, § 1; L. 2011, ch. 30, § 123; L. 2013, ch. 85, § 9; July 1.