

SECOND REGULAR SESSION

# SENATE BILL NO. 874

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time January 8, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5336S.02I

## AN ACT

To repeal section 540.021, RSMo, and to enact in lieu thereof two new sections relating to grand juries.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 540.021, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 540.021 and 540.026, to read as  
3 follows:

540.021. 1. Upon order of the presiding judge of the circuit court, or a  
2 judge designated by the presiding judge, **or a citizens' petition under section**  
3 **540.026**, names of prospective grand jurors shall be randomly selected from the  
4 master jury list in the manner determined by the board of jury commissioners.  
5 A summons for grand jury service and a juror qualification form shall be mailed  
6 or personally served to those persons selected in the form and as required by  
7 section 494.415 for petit jurors.

8 2. If it is determined from an examination of the juror qualification form  
9 that a person is not qualified to serve as a grand juror, that person shall be  
10 notified in a manner directed by the board of jury commissioners, and shall not  
11 be required to comply with the summons for grand jury service. The names of  
12 disqualified persons shall be deleted from the grand jury list.

13 3. Those prospective grand jurors not disqualified from grand jury service  
14 shall constitute the grand jury list. If later determined to be ineligible or  
15 disqualified, their names shall be deleted from the master jury list.

16 4. Those persons summoned for grand jury service shall be placed under  
17 the control and supervision of the presiding judge of the circuit court, or a judge  
18 designated by the presiding judge, who shall select twelve persons to serve as

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 grand jurors. Alternate grand jurors as determined by the judge shall also be  
20 selected, to serve as a grand juror upon the death, disqualification, or inability  
21 of one of the persons selected as a regular grand juror. The names of those  
22 persons selected as grand jurors and alternate grand jurors shall be deleted from  
23 the grand jury list.

24 5. The presiding judge of the circuit court, or a judge designated by the  
25 presiding judge, shall have the authority to convene, recess, and adjourn a grand  
26 jury as, in [his] **the judge's** discretion, [he] **the judge** deems necessary, and at  
27 times and places as [he] **the judge** specifies. No grand jury shall be required to  
28 serve for longer than a six-month period, except such term may be extended for  
29 a period not to exceed sixty days, solely for the purpose of considering and  
30 completing matters already before the grand jury. No new matters shall be  
31 presented to the grand jury during its extended service. Nothing contained in  
32 this section prevents the convening of another grand jury during such extended  
33 service.

34 6. Compensation shall be allowed grand jurors in the same amount as is  
35 provided by law for petit jurors pursuant to section 494.455.

**540.026. 1. Citizens in any county may summon a grand jury by  
2 filing a citizens' petition with the circuit court in accordance with this  
3 section. A grand jury shall be either summoned or denied by the  
4 presiding judge of the circuit court, or a judge designated by the  
5 presiding judge, within sixty days after a petition is filed.**

6 **2. Such petition shall contain the signatures of at least one  
7 hundred of the qualified voters within the county, plus two percent of  
8 the number of qualified voters who voted in the most recent  
9 gubernatorial election within the county. The petition shall contain the  
10 following information:**

11 **(1) The name, address, and phone number of the person filing the  
12 petition;**

13 **(2) The subject matter of the prospective grand jury;**

14 **(3) A reasonably specific identification of areas to be inquired  
15 into; and**

16 **(4) Sufficient general allegations to warrant a finding that such  
17 inquiry may lead to information that, if true, would warrant a true bill  
18 of indictment.**

19 **3. The person who filed the petition and whose name, address,**

20 and phone number appear on the petition under subdivision (1) of  
21 subsection 2 of this section shall be immune from liability for any civil  
22 damages arising from conduct performed in good faith under this  
23 section.

24 4. Affixed to the top of each page of the petition containing  
25 signatures shall be printed the following:

26 The undersigned qualified electors of the state of Missouri and  
27 ..... County (or City of St. Louis) hereby request that the circuit court  
28 of ..... County, Missouri, (or City of St. Louis, Missouri) within sixty  
29 days after the filing of this petition, cause a grand jury to be summoned  
30 in the county to investigate alleged violations of law.

31 5. The petition shall be filed in the office of the clerk of the  
32 circuit court who shall transmit the petition to the appropriate election  
33 authority, as defined in section 115.015, who shall determine whether  
34 the persons whose signatures are affixed to the petition are qualified  
35 electors of the county. The election authority shall have authority to  
36 verify the signatures on the petition filed by use of random  
37 sampling. The random sample of signatures to be verified shall be  
38 drawn in such a manner that every signature contained on the filed  
39 petition shall be given an equal opportunity to be included in the  
40 sample. Such a random sampling shall include an examination of not  
41 less than five percent of the signatures so filed. If the random sample  
42 verification establishes that the number of valid signatures:

43 (1) Is less than ninety-five percent of the number of qualified  
44 voters needed to find the petition sufficient, the petition shall be  
45 deemed to have failed verification;

46 (2) Total one hundred five percent or more of the number of  
47 qualified voters needed to find the petition sufficient, the petition shall  
48 be deemed verified; or

49 (3) Is more than ninety-five percent but less than one hundred  
50 five percent of the number of qualified voters needed to find the  
51 petition sufficient, each signature filed shall be examined and verified.  
52 Upon verification of the signatures, the election authority shall return  
53 the petition to the clerk of the circuit court, together with the such  
54 election authority's certificate stating the number of qualified electors  
55 of the county whose signatures appear on the petition and the  
56 aggregate number of qualified voters who voted in the most recent

57 gubernatorial election within the county.

58           6. The presiding judge of the circuit court, or a judge designated  
59 by the presiding judge, shall then consider the petition and, if the  
60 petition is determined to be in proper form and bears the signatures of  
61 the required number of qualified electors, a grand jury shall be ordered  
62 to be summoned and proceed in accordance with sections 540.031 to  
63 540.331. If a grand jury is not summoned because of a finding that the  
64 petition, substantially in the form required by subsections 2 and 3 of  
65 this section on its face, is not in proper form, the person who filed the  
66 petition and whose name, address, and phone number appear on the  
67 petition shall have the right to appeal the decision to not summon a  
68 grand jury as a final judgment under section 512.020.

69           7. After a grand jury is summoned pursuant to this section, but  
70 before it begins deliberations, a judge of the circuit court of the county  
71 in which the petition is presented shall provide instructions to the  
72 grand jury regarding its conduct and deliberations, which instructions  
73 shall include, but not be limited to, the following:

74           (1) The grand jury has been empaneled pursuant to a citizens'  
75 petition filed in the court, signed by (insert number) qualified electors  
76 of this county, stating (insert the subject matter described in the  
77 petition, including the reasonably specific identification of the areas  
78 to be inquired into and the allegations sufficient to warrant a finding  
79 that the grand jury's inquiry may lead to information which, if true,  
80 would warrant a true bill of indictment), and that the grand jury is  
81 charged with making inquiry with regard to this subject matter and  
82 determining whether the facts support allegations warranting a true  
83 bill of indictment;

84           (2) The person who filed the petition in the court and whose  
85 name, address, and phone number appear on the petition under  
86 subdivision (1) of subsection 2 of this section shall be the first witness  
87 the grand jury calls, for the purpose of presenting evidence and  
88 testimony as to the subject matter and allegations of the petition;

89           (3) The grand jury may, with the approval of the court, employ  
90 special counsel and investigators, and incur such other expense for  
91 services and supplies as the grand jury and the court deem  
92 necessary. Any special counsel or investigator the grand jury employs  
93 shall be selected by a majority vote of the members of the grand

94 jury. The grand jury shall make such selection only after hearing  
95 testimony from the person who filed the petition. The grand jury may  
96 utilize the services of any special counsel or investigator instead of, or  
97 in addition to, the services of the prosecuting or circuit  
98 attorney. However, the prosecuting or circuit attorney shall still have  
99 the authority to attend and participate in the grand jury proceedings  
100 pursuant to sections 540.130 and 540.140;

101 (4) If any witness duly summoned to appear and testify before  
102 the grand jury fails or refuses to obey, compulsory process shall be  
103 issued by the court to enforce attendance in accordance with 540.180;

104 (5) If any witness appearing before the grand jury refuses to  
105 testify or to answer any questions asked in the course of the  
106 examination, the grand jury shall communicate that fact to the court  
107 in writing, together with a statement regarding the question the  
108 witness refuses to answer, and in accordance with section 540.190, the  
109 court will determine and inform the grand jury of whether the witness  
110 is bound to answer or not. However, no witness appearing before the  
111 grand jury shall be compelled to make any statement which will  
112 incriminate such witness;

113 (6) Any person may file a written request with the prosecuting  
114 or circuit attorney or with the foreman of the grand jury and request  
115 to testify or retestify in an inquiry before the grand jury or to appear  
116 before a grand jury. Any written request shall include a summary of  
117 such person's written testimony; and

118 (7) At the conclusion of the inquiry and determination, the grand  
119 jury will return either a no bill of indictment or a true bill of  
120 indictment.

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