

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 842

Introduced by Lautenbaugh, 18.

Read first time January 08, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend section
2 29-1401, Reissue Revised Statutes of Nebraska; to change
3 provisions relating to procedures in cases of death
4 occurring during apprehension or custody; and to repeal
5 the original section.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1401, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-1401 (1) The district courts are hereby vested with
4 power to call grand juries.

5 (2) A grand jury may be called and summoned in the manner
6 provided by law on such day of a regular term of the district court
7 in each year in each county of the state as the district court may
8 direct and at such other times and upon such notice as the district
9 court may deem necessary.

10 (3) District courts shall call a grand jury in each
11 case that a petition meets the requirements of section 32-628,
12 includes a recital as to the reason for requesting the convening
13 of the grand jury and a specific reference to the statute or
14 statutes which are alleged to have been violated, and is signed not
15 more than ninety days prior to the date of filing under section
16 29-1401.02 by not less than ten percent of the registered voters of
17 the county who cast votes for the office of Governor in such county
18 at the most recent general election held for such office.

19 (4) District courts shall call a grand jury in each case
20 upon certification by the county coroner or coroner's physician
21 that a person has died while being apprehended by or while in the
22 custody of a law enforcement officer or detention personnel. In
23 each case subject to this subsection:

24 (a) Law enforcement personnel from the jurisdiction in
25 which the death occurred shall immediately secure the scene,

1 preserve all evidence, and investigate the matter as in any other
2 homicide; and - The case shall be treated as an open, ongoing
3 matter until all evidence, reports, and other relevant material
4 which has been assembled are transferred to the special prosecutor
5 appointed pursuant to subdivision (b) of this subsection;

6 (b) Except as provided in subdivision (d) of this
7 subsection, as soon as practicable, the court shall appoint a
8 special prosecutor who has had at least five years experience
9 in criminal litigation, including felony litigation. The special
10 prosecutor shall select a team of three peace officers, trained to
11 investigate homicides, from jurisdictions outside the jurisdiction
12 where the death occurred. The team shall examine all evidence
13 concerning the cause of death and present the findings of its
14 investigation to the special prosecutor;

15 (c) (b) A grand jury shall be impaneled within thirty
16 days after the certification by the county coroner or coroner's
17 physician, unless the court extends such time period upon the
18 showing of a compelling reason, and

19 (d) A special prosecutor need not be appointed in those
20 cases in which the death has been certified by a licensed
21 practicing physician to be from natural causes and that finding is
22 presented to a grand jury.

23 Sec. 2. Original section 29-1401, Reissue Revised
24 Statutes of Nebraska, is repealed.