

AMENDMENTS TO LB1055

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 29-1401, Revised Statutes Cumulative Supplement,
4 2014, is amended to read:

5 29-1401 (1) The district courts are hereby vested with power to call
6 grand juries.

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

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

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

25 (a) Law enforcement personnel from the jurisdiction in which the
26 death occurred shall immediately secure the scene, preserve all evidence,
27 and investigate the matter as in any other homicide. The case shall be

1 treated as an open, ongoing matter until all evidence, reports, and other
2 relevant material which has been assembled are transferred to a
3 prosecuting attorney selected pursuant to subdivision (b) of this
4 subsection;~~and~~

5 (b) The county attorney or a member of his or her staff shall be the
6 prosecuting attorney. Except as provided in subdivision (d) of this
7 subsection, the prosecuting attorney shall, as soon as practicable,
8 select a team of three peace officers trained to investigate homicides.
9 At least two of such investigators shall be from agencies other than the
10 agency under which the death occurred. The team shall examine all
11 evidence concerning the cause of death and present the findings of its
12 investigation to the prosecuting attorney.

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

17 (d) In those cases in which the death has been certified by a
18 licensed practicing physician to be from natural causes, the county
19 attorney or a member of his or her staff may present such finding to a
20 grand jury without selecting a three-member team of peace officers to
21 investigate.

22 Sec. 2. Section 29-1404, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 29-1404 (1) Except as provided in subsection (2) of this section,
25 when ~~when~~ the foreperson ~~foreman~~ shall be appointed, an oath or
26 affirmation shall be administered to him or her in the following words:
27 Saving yourself and fellow jurors, you, as foreperson ~~foreman~~ of this
28 grand inquest, shall diligently inquire and true presentment make, of all
29 such matters and things as shall be given you in charge or otherwise come
30 to your knowledge, touching the present service. The counsel of the
31 state, your own and your fellows, you shall keep secret, unless called on

1 in a court of justice to make disclosures. You shall present no person
2 through malice, hatred, or ill will, nor shall you leave any person
3 unrepresented through fear, favor, or affection, or for any reward or hope
4 thereof; but in all your presentments you shall present the truth, the
5 whole truth, and nothing but the truth, according to the best of your
6 skill and understanding.

7 (2) For grand juries impaneled pursuant to subsection (4) of section
8 29-1401, when the foreperson shall be appointed, an oath or affirmation
9 shall be administered to him or her in the following words: Saving
10 yourself and fellow jurors, you, as foreperson of this grand inquest,
11 shall diligently inquire and true presentment make, of all such matters
12 and things as shall be given you in charge or otherwise come to your
13 knowledge, touching the present service. The counsel of the state, your
14 own and your fellows, you shall keep secret during the course of the
15 impaneled grand jury's investigation and deliberations, unless called on
16 in a court of justice to make disclosures. You shall present no person
17 through malice, hatred, or ill will, nor shall you leave any person
18 unrepresented through fear, favor, or affection, or for any reward or hope
19 thereof; but in all your presentments you shall present the truth, the
20 whole truth, and nothing but the truth, according to the best of your
21 skill and understanding.

22 Sec. 3. Section 29-1406, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 29-1406 (1) The grand jury, after being sworn, shall be charged as
25 to their duty by the judge, who shall call their attention particularly
26 to the obligation of secrecy which their oaths impose, and to such
27 offenses as he or she is by law required to specially charge.

28 (2) Upon impanelment of each grand jury, the court shall give to
29 such grand jury adequate and reasonable written notice of and shall
30 assure that the grand jury reasonably understands the nature of:

31 (a) Its duty to inquire into offenses against the criminal laws of

1 the State of Nebraska alleged to have been committed or, in the case of a
2 grand jury impaneled pursuant to subsection (4) of section 29-1401, its
3 duty to inquire into offenses against the criminal laws of the State of
4 Nebraska regarding the death of a person who has died while being
5 apprehended or while in the custody of a law enforcement officer or
6 detention personnel;

7 (b) Its right to call and interrogate witnesses;

8 (c) Its right to request the production of documents or other
9 evidence;

10 (d) The subject matter of the investigation and the criminal
11 statutes or other statutes involved, if these are known at the time the
12 grand jury is impaneled;

13 (e) The duty of the grand jury by an affirmative vote of twelve or
14 more members of the grand jury to determine, based on the evidence
15 presented before it, whether or not there is probable cause for finding
16 indictments and to determine the violations to be included in any such
17 indictments; ~~and~~

18 (f) The requirement that the grand jury may not return an indictment
19 in cases of perjury unless at least two witnesses to the same fact
20 present evidence establishing probable cause to return such an
21 indictment; and -

22 (g) In the case of a grand jury impaneled pursuant to subsection (4)
23 of section 29-1401, if the grand jury returns a no true bill:

24 (i) The grand jury shall create a grand jury report with the
25 assistance of the prosecuting attorney. The grand jury report shall
26 briefly provide an explanation of the grand jury's findings and any
27 recommendations the grand jury determines to be appropriate based upon
28 the grand jury's investigation and deliberations; and

29 (ii) The no true bill and the grand jury report shall be filed with
30 the court, where they shall be available for public review, along with
31 the grand jury transcript provided for in subdivision (2)(b) of section

1 29-1407.01.

2 Sec. 4. Section 29-1407.01, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 29-1407.01 (1) A certified or authorized reporter shall be present
5 at all grand jury sessions. All grand jury proceedings and testimony from
6 commencement to adjournment shall be reported.

7 (2)(a) Except as provided in subdivision (2)(b) of this section, the
8 The reporter's notes and any transcripts which may be prepared shall be
9 preserved, sealed, and filed with the court. No release or destruction of
10 the notes or transcripts shall occur without prior court approval.

11 (b) In the case of a grand jury impaneled pursuant to subsection (4)
12 of section 29-1401, a transcript, including any exhibits of the grand
13 jury proceedings, shall be prepared at court expense and shall be filed
14 with the court where it shall be available for public review. Such
15 transcript shall not include the names of grand jurors or their
16 deliberations.

17 (3 2) Upon application by the prosecutor, or by any witness after
18 notice to the prosecutor, the court, for good cause, may enter an order
19 to furnish to that witness a transcript of his or her own grand jury
20 testimony, or minutes, reports, or exhibits relating thereto.

21 (4 3) Any witness summoned to testify before a grand jury, or an
22 attorney for such witness with the witness's written approval, shall be
23 entitled, prior to testifying, to examine and copy at the witness's
24 expense any statement in the possession of the prosecuting attorney or
25 the grand jury which such witness has made that relates to the subject
26 matter under inquiry by the grand jury. If a witness is proceeding in
27 forma pauperis, he or she shall be furnished, upon request, a copy of
28 such transcript and shall not pay a fee.

29 Sec. 5. Section 29-1420, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 29-1420 (1) Except as provided in subdivision (2)(g) of section

1 29-1406, the ~~The~~ report of the grand jury shall not be made public except
2 when the report is filed, including indictments, or when required by
3 statute or except that all of the report or a portion thereof may be
4 released if the judge of the district court finds that such a release
5 will exonerate a person or persons who have requested such a release.

6 (2) A district judge under whose direction a grand jury has been
7 impaneled may, upon good cause shown, transfer to a court of competent
8 jurisdiction in another county or jurisdiction any evidence gathered by
9 the grand jury that offenses have been committed in such other county or
10 jurisdiction.

11 Sec. 6. Original sections 29-1404, 29-1406, 29-1407.01, and
12 29-1420, Reissue Revised Statutes of Nebraska, and section 29-1401,
13 Revised Statutes Cumulative Supplement, 2014, are repealed.