

AMENDMENTS TO LB1000

Introduced by Judiciary.

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

3 Section 1. For purposes of sections 1 to 3 of this act, unless the
4 context otherwise requires:

5 (1) Body-worn camera means a device worn by a peace officer in
6 uniform which has the capability to record both audio and video of an
7 interaction between a peace officer and a member of the public but does
8 not include any device used by a plain clothes officer;

9 (2) Commission means the Nebraska Commission on Law Enforcement and
10 Criminal Justice;

11 (3) Law enforcement agency means an agency or department of this
12 state or of any political subdivision of this state which is responsible
13 for the prevention and detection of crime, the enforcement of the penal,
14 traffic, or highway laws of this state or any political subdivision of
15 this state, and the enforcement of arrest warrants. Law enforcement
16 agency includes a police department, an office of a town marshal, an
17 office of a county sheriff, the Nebraska State Patrol, and any department
18 to which a deputy state sheriff is assigned as provided in section
19 84-106; and

20 (4) Peace officer means any officer or employee of a law enforcement
21 agency authorized by law to make arrests.

22 Sec. 2. (1) On or before December 1, 2016, the commission shall
23 develop and distribute a model body-worn camera policy that includes the
24 procedures and provisions required by section 3 of this act. Any law
25 enforcement agency required to adopt a policy under this section that
26 does not develop and adopt its own policy shall adopt the model body-worn
27 camera policy developed by the commission.

1 (2)(a) Any law enforcement agency which uses body-worn cameras as of
2 the effective date of this act shall, on or before January 1, 2017, adopt
3 a written body-worn camera policy. Such policy shall include procedures
4 and provisions in conformance with the minimum standards set forth in the
5 model body-worn camera policy developed by the commission, and may
6 include any other procedures and provisions the law enforcement agency
7 deems appropriate.

8 (b) Beginning January 1, 2017, any law enforcement agency which uses
9 body-worn cameras shall, prior to commencing such use, adopt a written
10 body-worn camera policy. Such policy shall include procedures and
11 provisions in conformance with the minimum standards set forth in the
12 model body-worn camera policy developed by the commission, and may
13 include any other procedures and provisions the law enforcement agency
14 deems appropriate.

15 (3) The head of a law enforcement agency required to adopt a policy
16 under this section shall provide a copy of such policy to the commission
17 within three months of such policy's adoption.

18 (4) On or before January 1, 2018, and each January 1 thereafter,
19 when any law enforcement agency required to adopt a policy under this
20 section has made any change to its policy in the preceding year, the head
21 of such agency shall provide an updated copy of such policy to the
22 commission.

23 Sec. 3. A body-worn camera policy required by section 2 of this act
24 shall include provisions which govern the use of body-worn cameras by
25 peace officers and the retention and disposition of recordings created
26 with such cameras by law enforcement agencies. Such body-worn camera
27 policy shall include, but not be limited to:

28 (1) A requirement that training be provided to any peace officer who
29 will use a body-worn camera and to any other employee who will come into
30 contact with video or audio data recorded by a body-worn camera;

31 (2) A requirement that recordings created by body-worn cameras shall

1 be retained for a minimum period of ninety days from the date of
2 recording. Such recordings shall be retained for more than ninety days if
3 required by the following circumstances:

4 (a) Upon notice to the law enforcement agency of a criminal or civil
5 court proceeding in which the recording may have evidentiary value or in
6 which the recording is otherwise involved, the recording shall be
7 retained until final judgment has been entered in the proceeding;

8 (b) Upon notice to the law enforcement agency of a disciplinary
9 proceeding against an employee of the agency in which the recording may
10 have evidentiary value or in which the recording is otherwise involved,
11 the recording shall be retained until a final determination has been made
12 in such proceeding; and

13 (c) If the recording is part of a criminal investigation that has
14 not resulted in an arrest or prosecution, the recording shall be retained
15 until the investigation is officially closed or suspended; and

16 (3) A procedure governing the destruction of recordings after the
17 retention period described in subdivision (2) of this section has
18 elapsed.

19 Sec. 4. (1) On or before January 1, 2017, the Nebraska State Patrol,
20 each county sheriff, each city or village police department, and any
21 other law enforcement agency in this state which conducts eyewitness
22 suspect identifications shall adopt a written policy on eyewitness
23 suspect identifications and provide a copy of such policy to the Nebraska
24 Commission on Law Enforcement and Criminal Justice. The policy shall
25 include the minimum standards developed by the commission relating to the
26 following: (a) Standards which describe the administration of a lineup,
27 (b) procedures governing the instructions given by a peace officer to an
28 eyewitness, and (c) procedures for documentation of the eyewitness's
29 level of certainty of an identification.

30 (2) The Nebraska Commission on Law Enforcement and Criminal Justice
31 shall distribute a standard model written policy on suspect

1 identification by eyewitnesses. Any law enforcement agency described in
2 subsection (1) of this section which fails to adopt its own policy as
3 required by this section shall adopt the commission's standard model
4 written policy.

5 Sec. 5. Section 29-1401, Revised Statutes Cumulative Supplement,
6 2014, is amended to read:

7 29-1401 (1) The district courts are hereby vested with power to call
8 grand juries.

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

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

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

27 (a) Law enforcement personnel from the jurisdiction in which the
28 death occurred shall immediately secure the scene, preserve all evidence,
29 and investigate the matter as in any other homicide. The case shall be
30 treated as an open, ongoing matter until all evidence, reports, and other
31 relevant material which has been assembled are transferred to a

1 prosecuting attorney selected pursuant to subdivision (b) of this
2 subsection; and

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

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

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

20 Sec. 6. Section 29-1404, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 29-1404 (1) Except as provided in subsection (2) of this section,
23 when ~~When~~ the foreperson foreman shall be appointed, an oath or
24 affirmation shall be administered to him or her in the following words:
25 Saving yourself and fellow jurors, you, as foreperson foreman of this
26 grand inquest, shall diligently inquire and true presentment make, of all
27 such matters and things as shall be given you in charge or otherwise come
28 to your knowledge, touching the present service. The counsel of the
29 state, your own and your fellows, you shall keep secret, unless called on
30 in a court of justice to make disclosures. You shall present no person
31 through malice, hatred, or ill will, nor shall you leave any person

1 unpresented through fear, favor, or affection, or for any reward or hope
2 thereof; but in all your presentments you shall present the truth, the
3 whole truth, and nothing but the truth, according to the best of your
4 skill and understanding.

5 (2) For grand juries impaneled pursuant to subsection (4) of section
6 29-1401, when the foreperson shall be appointed, an oath or affirmation
7 shall be administered to him or her in the following words: Saving
8 yourself and fellow jurors, you, as foreperson of this grand inquest,
9 shall diligently inquire and true presentment make, of all such matters
10 and things as shall be given you in charge or otherwise come to your
11 knowledge, touching the present service. The counsel of the state, your
12 own and your fellows, you shall keep secret during the course of the
13 impaneled grand jury's investigation and deliberations, unless called on
14 in a court of justice to make disclosures. You shall present no person
15 through malice, hatred, or ill will, nor shall you leave any person
16 unpresented through fear, favor, or affection, or for any reward or hope
17 thereof; but in all your presentments you shall present the truth, the
18 whole truth, and nothing but the truth, according to the best of your
19 skill and understanding.

20 Sec. 7. Section 29-1406, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 29-1406 (1) The grand jury, after being sworn, shall be charged as
23 to their duty by the judge, who shall call their attention particularly
24 to the obligation of secrecy which their oaths impose, and to such
25 offenses as he or she is by law required to specially charge.

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

29 (a) Its duty to inquire into offenses against the criminal laws of
30 the State of Nebraska alleged to have been committed or, in the case of a
31 grand jury impaneled pursuant to subsection (4) of section 29-1401, its

1 duty to inquire into offenses against the criminal laws of the State of
2 Nebraska regarding the death of a person who has died while being
3 apprehended or while in the custody of a law enforcement officer or
4 detention personnel;

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

6 (c) Its right to request the production of documents or other
7 evidence;

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

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

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

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

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

27 (ii) The no true bill and the grand jury report shall be filed with
28 the court, where they shall be available for public review, along with
29 the grand jury transcript provided for in subdivision (2)(b) of section
30 29-1407.01.

31 Sec. 8. Section 29-1407.01, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 29-1407.01 (1) A certified or authorized reporter shall be present
3 at all grand jury sessions. All grand jury proceedings and testimony from
4 commencement to adjournment shall be reported.

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

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

15 (3 2) Upon application by the prosecutor, or by any witness after
16 notice to the prosecutor, the court, for good cause, may enter an order
17 to furnish to that witness a transcript of his or her own grand jury
18 testimony, or minutes, reports, or exhibits relating thereto.

19 (4 3) Any witness summoned to testify before a grand jury, or an
20 attorney for such witness with the witness's written approval, shall be
21 entitled, prior to testifying, to examine and copy at the witness's
22 expense any statement in the possession of the prosecuting attorney or
23 the grand jury which such witness has made that relates to the subject
24 matter under inquiry by the grand jury. If a witness is proceeding in
25 forma pauperis, he or she shall be furnished, upon request, a copy of
26 such transcript and shall not pay a fee.

27 Sec. 9. Section 29-1420, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 29-1420 (1) Except as provided in subdivision (2)(g) of section
30 29-1406, the ~~The~~ report of the grand jury shall not be made public except
31 when the report is filed, including indictments, or when required by

1 statute or except that all of the report or a portion thereof may be
2 released if the judge of the district court finds that such a release
3 will exonerate a person or persons who have requested such a release.

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

9 Sec. 10. Original sections 29-1404, 29-1406, 29-1407.01, and
10 29-1420, Reissue Revised Statutes of Nebraska, and section 29-1401,
11 Revised Statutes Cumulative Supplement, 2014, are repealed.