

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT
LB1055

Hearing Date: Wednesday February 24, 2016
Committee On: Judiciary
Introducer: Chambers
One Liner: Open grand jury proceedings to the public as prescribed and change procedures in cases of death during apprehension by law enforcement officers or while in custody

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Chambers, Coash, Ebke, Krist, Morfeld, Pansing Brooks, Seiler, Williams
Nay:
Absent:
Present Not Voting:

Verbal Testimony:

Proponents:

SEN, ERNIE CHAMBERS
DON KLEIN

TODD SCMADERER
JOE KELLY
SHAWN RENNER

Representing:

INTRODUCER
DOUGLAS COUNTY ATTORNEY, NE COUNTY ATTORNEYS
OMAHA POLICE
LANCASTER COUNTY ATTORNEY
MEDIA OF NEBRASKA

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB1055 would change procedures relating to grand jury proceedings.

Section 1 would amend 29-1401 to provide that all grand jury proceedings are open to the public except as provided in section 29-1408, which provides that no person may remain in the room while the grand jurors are "expressing their views or giving their votes on any matter before the jury".

This section would also add new provisions regarding grand jury investigations following the death of a person in the custody of law enforcement. Currently, the section requires (a)law enforcement officers from the jurisdiction to secure the scene and investigate the death as a homicide, and requires (b)impaneling a grand jury within 30 days after certification of death by the coroner, unless the court extends the time.

As amended, this section would add to the requirements in subdivision (a), and would add new requirements, as follows:

Require law enforcement to keep the investigation open until they transfer their reports to the prosecuting attorney.

Require the court to appoint a prosecuting attorney with at least 5 years of experience, and would require the prosecuting attorney to select three homicide detectives from a different jurisdiction to examine the evidence.

This section would also state that there is no need to appoint a prosecuting attorney where a physician has certified that the death occurred from natural causes.

Section 2 would amend 29-1404 to remove the secrecy requirement from the oath or affirmation administered to the grand jury members. This section would also strike reference to the "foreman" and replace it with "foreperson".

Section 3 would amend 29-1406 to strike reference to the secrecy requirement removed from the grand jury oath or affirmation in section 2 of the bill.

Section 4 would amend 29-1407.01 to strike the requirement to seal the record of the grand jury proceeding. This section would also provide that the grand jury notes and transcript "shall not be destroyed".

Section 5 would amend 29-1411 to strike the requirement for an attorney present in the grand jury room to take an oath of secrecy.

Section 6 would amend 29-1420 to strike the requirement that a grand jury report not be made public, except in certain circumstances.

Section 7 would repeal the sections amended by this act.

Section 8 would outright repeal 29-1415, which prohibits the disclosure of a juror's vote or opinion. Section 29-1415 states: "No grand juror shall be allowed to state or testify in any court in what manner he or other members of the grand jury voted on any question before them, or what opinion was expressed by any juror in relation to such question."

Explanation of amendments:

AM2257 to LB1055 would strike the language of the bill as introduced, and replace it with the following:

Section 1 would amend 29-1401, subsection (4), regarding grand jury proceedings in cases following the death of a person in the custody of law enforcement or while otherwise detained.

Currently, the section requires (a) law enforcement officers from the jurisdiction to secure the scene and investigate the death as a homicide, and requires (b) impaneling a grand jury within 30 days after certification of death by the coroner, unless the court extends the time.

As amended, this section would add to the requirements in subdivision (a), and would add new requirements, as follows:

Require law enforcement to keep the investigation open until they transfer their reports to the prosecuting attorney.

(b) Require the county attorney to act as the prosecuting attorney, or select a member of his or her staff to act as the prosecuting attorney. The bill would also require the prosecuting attorney to select three homicide detectives to examine the evidence. At least two of the detectives would be required to be selected from an agency other than the agency under which the death occurred.

(d) This section would also state that, in cases where a physician has certified that the death occurred from natural causes, the prosecuting attorney may present the physician's finding to the grand jury without selecting a three-member team of law enforcement investigators.

Section 2 would amend 29-1404 to strike reference to the "foreman" and replace it with "foreperson" and to change provisions regarding the secrecy requirement for grand jurors in cases of death in custody.

Instead of striking the secrecy requirement from the oath or affirmation administered to the grand jury members for all grand juries, the amendment would insert a new subsection (2) to provide a modified oath for grand jurors in cases of death in custody. The relevant language can be found on page 3, lines 13-16 of the amendment. It requires a grand juror to maintain secrecy only during the course of the grand jury investigation and deliberations.

Section 3 would amend 29-1406 to provide requirements for grand jurors in cases of a death in custody when the grand jury returns a "no true bill" meaning, cases when the grand jury does not return an indictment.

In subsection (1), the amendment would not strike the reference to the grand jurors' oath of secrecy. The amendment would add new language in subdivision (2)(a) to require the court to inform the grand jurors and make sure they understand their duty to inquire into criminal offenses relating to a death in custody.

The amendment would also add new language in subdivision (2)(g) to require the court to inform the grand jurors and make sure they understand their duties. In cases of a death in custody when the grand jury returns a no true bill, their duties include: (i) create a grand jury report with the assistance of the prosecuting attorney, to explain their findings and recommendations, based on their investigation and deliberation; and (ii) file the grand jury report and no true bill with the court, where it will be available for public review, along with a transcript of the proceedings.

Section 4 would amend 29-1407.01 to regarding the requirement to seal the record of the grand jury proceeding. The amendment would not strike the language regarding release or destruction of notes and transcripts; in general, release of grand jury notes and transcripts is not allowed without prior court approval.

As amended, the bill would add new language in subdivision (2)(b) to provide requirements for preparing the transcript of grand jury proceedings for cases involving a death in custody. The court would be required to prepare the transcript, including exhibits of the proceedings, but not including names of the grand jurors. The transcript would be filed with the court and available for public review.

Section 5 would amend 29-1420 regarding the requirement that a grand jury report not be made public, except in certain circumstances. The amendment would not strike subsection (1), regarding release of grand jury reports, in general. The amendment would allow release of grand jury reports in cases of death in custody, as provided in section 3 of this bill.

Section 6 would repeal the sections amended by this act.

The amendment would make no change to 29-1411; the green copy of the bill would have eliminated the requirement for an attorney present in the grand jury room to take an oath of secrecy.

The amendment would make no change to 29-1415; the green copy of the bill would have outright repealed that section, which prohibits grand jurors from testifying regarding opinions expressed by grand jurors.

Les Seiler, Chairperson