

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 157

Introduced by Wayne, 13.

Read first time January 08, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1401, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to grand juries called in cases of death occurring during
- 4 apprehension or custody; to require appointment of a special
- 5 prosecutor; and to repeal 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 Nebraska, is
2 amended to read:

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

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

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

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

23 (a) Law enforcement personnel from the jurisdiction in which the
24 death occurred shall immediately secure the scene, preserve all evidence,
25 and investigate the matter as in any other homicide. The case shall be
26 treated as an open, ongoing matter until all evidence, reports, and other
27 relevant material which has been assembled are transferred to the special
28 prosecutor appointed ~~a prosecuting attorney~~ selected pursuant to
29 subdivision (b) of this subsection;

30 (b) ~~The county attorney or a member of his or her staff shall be the~~
31 ~~prosecuting attorney.~~ Except as provided in subdivision (d) of this

1 subsection, ~~the prosecuting attorney shall,~~ as soon as practicable, the
2 court shall appoint a special prosecutor who has had at least five years
3 experience in criminal litigation, including felony litigation. The
4 special prosecutor shall select a team of three peace officers trained to
5 investigate homicides. ~~At least two of such investigators shall be from~~
6 jurisdictions outside the jurisdiction where agencies other than the
7 ~~agency under which~~ the death occurred. The team shall examine all
8 evidence concerning the cause of death and present the findings of its
9 investigation to the special prosecutor ~~prosecuting attorney~~;

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

14 (d) A special prosecutor need not be appointed in ~~In~~ those cases in
15 which the death has been certified by a licensed practicing physician to
16 be from natural causes and ~~,~~ the county attorney or a member of his or
17 her staff may present such finding to a grand jury ~~without selecting a~~
18 ~~three-member team of peace officers to investigate.~~

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