

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1055

Introduced by Chambers, 11.

Read first time January 20, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to grand juries; to amend sections 29-1404,
2 29-1406, 29-1407.01, 29-1411, and 29-1420, Reissue Revised Statutes
3 of Nebraska, and section 29-1401, Revised Statutes Cumulative
4 Supplement, 2014; to open grand jury proceedings to the public and
5 change other grand jury procedures as prescribed; to repeal the
6 original sections; and to outright repeal section 29-1415, Reissue
7 Revised Statutes of Nebraska.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1401, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

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

5 (2) Except as provided in section 29-1408, all proceedings before
6 grand juries shall be open to the public.

7 (3 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 (4 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 (5 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
28 treated as an open, ongoing matter until all evidence, reports, and other
29 relevant material which has been assembled are transferred to a
30 prosecuting attorney appointed pursuant to subdivision (b) of this
31 subsection; and

1 (b) Except as provided in subdivision (d) of this subsection, as
2 soon as practicable, the court shall appoint a prosecuting attorney who
3 shall be the county attorney or a member of his or her staff who has had
4 at least five years experience in criminal litigation, including felony
5 litigation. The prosecuting attorney shall select a team of three peace
6 officers, trained to investigate homicides, from jurisdictions outside
7 the jurisdiction where 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 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) The court need not appoint a prosecuting attorney in those cases
15 in which the death has been certified by a licensed practicing physician
16 to be from natural causes and that finding is presented to a grand jury.

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

19 29-1404 When the foreperson ~~foreman~~ shall be appointed, an oath or
20 affirmation shall be administered to him or her in the following words:
21 Saving yourself and fellow jurors, you, as foreperson ~~foreman~~ of this
22 grand inquest, shall diligently inquire and true presentment make, of all
23 such matters and things as shall be given you in charge or otherwise come
24 to your knowledge, touching the present service. ~~The counsel of the~~
25 ~~state, your own and your fellows, you shall keep secret, unless called on~~
26 ~~in a court of justice to make disclosures.~~ You shall present no person
27 through malice, hatred, or ill will, nor shall you leave any person
28 unrepresented through fear, favor, or affection, or for any reward or hope
29 thereof; but in all your presentments you shall present the truth, the
30 whole truth, and nothing but the truth, according to the best of your
31 skill and understanding.

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

3 29-1406 (1) The grand jury, after being sworn, shall be charged as
4 to their duty by the judge, who shall call their attention ~~particularly~~
5 ~~to the obligation of secrecy which their oaths impose,~~ and to such
6 offenses as he or she is by law required to specially charge.

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

10 (a) Its duty to inquire into offenses against the criminal laws of
11 the State of Nebraska alleged to have been committed;

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

13 (c) Its right to request the production of documents or other
14 evidence;

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

18 (e) The duty of the grand jury by an affirmative vote of twelve or
19 more members of the grand jury to determine, based on the evidence
20 presented before it, whether or not there is probable cause for finding
21 indictments and to determine the violations to be included in any such
22 indictments; and

23 (f) The requirement that the grand jury may not return an indictment
24 in cases of perjury unless at least two witnesses to the same fact
25 present evidence establishing probable cause to return such an
26 indictment.

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

29 29-1407.01 (1) A certified or authorized reporter shall be present
30 at all grand jury sessions. All grand jury proceedings and testimony from
31 commencement to adjournment shall be reported. The reporter's notes and

1 any transcripts which may be prepared shall be preserved, ~~sealed,~~ and
2 filed with the court. ~~The No release or destruction of the notes and or~~
3 transcripts shall not be destroyed ~~occur without prior court approval.~~

4 (2) Upon application by the prosecutor, or by any witness after
5 notice to the prosecutor, the court shall ~~, for good cause, may~~ enter an
6 order to furnish to that witness a transcript of his or her own grand
7 jury testimony, or minutes, reports, or exhibits relating thereto.

8 (3) Any witness summoned to testify before a grand jury, or an
9 attorney for such witness with the witness's written approval, shall be
10 entitled, prior to testifying, to examine and copy at the witness's
11 expense any statement in the possession of the prosecuting attorney or
12 the grand jury which such witness has made that relates to the subject
13 matter under inquiry by the grand jury. If a witness is proceeding in
14 forma pauperis, he or she shall be furnished, upon request, a copy of
15 such transcript and shall not pay a fee.

16 Sec. 5. Section 29-1411, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 29-1411 (1) In any proceeding before the grand jury, if the
19 prosecuting attorney has written notice in advance of the appearance of a
20 witness that such witness intends to exercise his or her privilege
21 against self-incrimination, such witness shall not be compelled to appear
22 before the grand jury unless a grant of immunity has been obtained.

23 (2) Any witness subpoenaed to appear and testify before a grand jury
24 or to produce books, papers, documents, or other objects before such
25 grand jury shall be entitled to assistance of counsel during any time
26 that such witness is being questioned in the presence of such grand jury,
27 and counsel may be present in the grand jury room with his or her client
28 during such questioning. Counsel for the witness shall be permitted only
29 to counsel with the witness and shall not make objections, arguments, or
30 address the grand jury. Such counsel may be retained by the witness or
31 may, for any person financially unable to obtain adequate assistance, be

1 appointed in the same manner as if that person were eligible for
2 appointed counsel. ~~An attorney present in the grand jury room shall take~~
3 ~~an oath of secrecy.~~ If the court, at an in camera hearing, determines
4 that counsel was disruptive, then the court may order counsel to remain
5 outside the courtroom when advising his or her client. No attorney shall
6 be permitted to provide counsel in the grand jury room to more than one
7 witness in the same criminal investigation, except with the permission of
8 the grand jury.

9 (3) If any witness appearing before a grand jury shall refuse to
10 answer any interrogatories during the course of his or her examination,
11 the fact shall be communicated to the court in writing, in which the
12 question refused to be answered shall be stated, together with the excuse
13 for the refusal, if any be given by the person interrogated. The court
14 shall thereupon determine whether the witness is bound to answer or not,
15 and the grand jury shall be immediately informed of the decision.

16 Sec. 6. Section 29-1420, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 29-1420 ~~(1) The report of the grand jury shall not be made public~~
19 ~~except when the report is filed, including indictments, or when required~~
20 ~~by statute or except that all of the report or a portion thereof may be~~
21 ~~released if the judge of the district court finds that such a release~~
22 ~~will exonerate a person or persons who have requested such a release.~~

23 ~~(2)~~ A district judge under whose direction a grand jury has been
24 impaneled may, upon good cause shown, transfer to a court of competent
25 jurisdiction in another county or jurisdiction any evidence gathered by
26 the grand jury that offenses have been committed in such other county or
27 jurisdiction.

28 Sec. 7. Original sections 29-1404, 29-1406, 29-1407.01, 29-1411,
29 and 29-1420, Reissue Revised Statutes of Nebraska, and section 29-1401,
30 Revised Statutes Cumulative Supplement, 2014, are repealed.

31 Sec. 8. The following section is outright repealed: Section

1 29-1415, Reissue Revised Statutes of Nebraska.