

LEGISLATIVE BILL 842

Approved by the Governor April 13, 2010

Introduced by Lautenbaugh, 18.

FOR AN ACT relating to criminal procedure; to amend section 29-1401, Reissue Revised Statutes of Nebraska; to change provisions relating to procedures in cases of death occurring during apprehension or custody; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 29-1401, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

~~(b) Except as provided in subdivision (d) of this subsection, as soon as practicable, the court shall appoint a special prosecutor who has had at least five years experience in criminal litigation, including felony litigation. The special prosecutor shall select a team of three peace officers, trained to investigate homicides, from jurisdictions outside the jurisdiction where the death occurred. The team shall examine all evidence concerning the cause of death and present the findings of its investigation to the special prosecutor;~~

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

~~(d) A special prosecutor need not be appointed in those cases in which the death has been certified by a licensed practicing physician to be from natural causes and that finding is presented to a grand jury.~~

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