

LEGISLATIVE BILL 524

Approved by the Governor April 20, 1979

Introduced by Chambers, 11

AN ACT relating to grand juries; to change provisions relating to the charge to the jury, reporters, and subpoenas; to provide rights and procedures related to witnesses; to add provisions dealing with the indictment; to amend sections 29-1406, 29-1407, 29-1409, 29-1411, 29-1412, 29-1416, and 29-1418, Reissue Revised Statutes of Nebraska, 1943; and to repeal the original sections.

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

Section 1. That section 29-1406, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

(b) Its right to call and interrogate witnesses;

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

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

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

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

Sec. 2. That section 29-1407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1407. After the charge of the court, the grand jury shall retire with the officer appointed to attend to them, and shall proceed to inquire of and present all offenses whatever committed within the limits of the county in and for which they were impaneled and sworn or affirmed. ~~Provided, that the grand jury must be furnished with an official reporter upon a written request signed by a majority of such jurors, and provided further, that no report shall be filed by said grand jury unless one or more indictments are returned relating to the subject matter of the report.~~

Sec. 3. (1) A certified or authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. The reporter's notes and any transcripts which may be prepared shall be preserved, sealed, and filed with the court. No release or destruction of the notes or transcripts shall occur without prior court approval.

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

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

Sec. 4. That section 29-1409, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1409. (1) Whenever required by the grand jury, or the prosecuting attorney, the clerk of the court

in which such jury is impaneled shall issue subpoenas and other process to bring witnesses to testify before such grand jury.

(2) At the option of the prosecuting attorney, a grand jury subpoena may contain an advisement of rights. If the prosecuting attorney determines that an advisement is necessary, the grand jury subpoena shall contain the following prominently displayed on the front of the subpoena:

NOTICE

(a) You have the right to retain an attorney to represent you and to advise you regarding your grand jury appearance.

(b) Anything you say to the grand jury may be used against you in a court of law.

(c) You have the right to refuse to answer questions if you feel the answers would tend to incriminate you or to implicate you in any illegal activity.

(d) If you cannot afford or obtain an attorney, you may consult with the public defender's office, or request the court to appoint an attorney to represent you.

(3) Any witness who is not advised of his or her rights pursuant to subsection (2) of this section shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she testifies or any evidence he or she produces, nor shall any such testimony or evidence be used as evidence in any criminal proceeding, except for perjury, against him or her in any court.

Sec. 5. Any person may approach the prosecuting attorney or the grand jury and request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. The prosecuting attorney or the grand jury shall keep a record of all denials of such requests to that prosecuting attorney or grand jury, including the reasons for not allowing such person to testify or appear. If the person making such request is dissatisfied with the decision of the prosecuting attorney or the grand jury, such person may petition the court for hearing on the denial by the prosecuting attorney or the grand jury. If the court grants the hearing, then the court may permit the person to testify or appear before the grand jury if the court finds that

such testimony or appearance would serve the interests of justice.

Sec. 6. That section 29-1411, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(2) Any witness subpoenaed to appear and testify before a grand jury or to produce books, papers, documents, or other objects before such grand jury shall be entitled to assistance of counsel during any time that such witness is being questioned in the presence of such grand jury, and counsel may be present in the grand jury room with his or her client during such questioning. Counsel for the witness shall be permitted only to counsel with the witness and shall not make objections, arguments, or address the grand jury. Such counsel may be retained by the witness or may, for any person financially unable to obtain adequate assistance, be appointed in the same manner as if that person were eligible for appointed counsel. An attorney present in the grand jury room shall take an oath of secrecy. If the court, at an in camera hearing, determines that counsel was disruptive, then the court may order counsel to remain outside the courtroom when advising his or her client. No attorney shall be permitted to provide counsel in the grand jury room to more than one witness in the same criminal investigation, except with the permission of the grand jury.

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

Sec. 7. That section 29-1412, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1412. ~~If the court determines that the witness is bound to answer, and he persists in his refusal, he shall be brought before the court, who shall proceed in the same manner as if the witness had been interrogated and refused to answer in open court.~~ (1)

(a) Whenever a witness in any proceeding before any grand jury refuses, without just cause shown, to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording, or other material, the prosecuting attorney may submit an application to the court for an order directing the witness to show why the witness should not be held in contempt. After submission of such application and a hearing at which the witness may be represented by counsel, the court may, if the court finds that such refusal was without just cause, hold the witness in contempt and order the witness to be confined or to pay a fine of not to exceed five hundred dollars. Such confinement shall continue until such time as the witness is willing to give such testimony or provide such information, except that the court may release the witness from confinement if the court determines that further confinement will not cause the witness to give such testimony or provide such information. No period of such confinement shall exceed the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, and in no event shall such confinement exceed six months.

(b) If a witness has been confined in accordance with subsection (1) (a) of this section, he or she may, upon petition filed with the court, request a hearing to be held within ten days to review the contempt order at which hearing he or she shall have the right to be represented by counsel. The court, at the hearing, may rescind, modify, or affirm the order.

(c) In any proceeding conducted under this section, counsel may be appointed for a person financially unable to obtain adequate assistance.

(2) No person who has been confined or fined by a court for refusal to testify or provide other information concerning any criminal incident or incidents in any proceeding before a grand jury impaneled before any district court shall again be confined or fined for a subsequent refusal to testify or provide other information concerning the same criminal incident or incidents before any grand jury.

Sec. 8. No person subpoenaed to testify or to produce books, papers, documents, or other objects in any proceeding before any grand jury shall be required to

testify or to produce such objects, or be confined as provided in section 29-1412, for his or her failure to so testify or produce such object if, upon filing a motion and, upon an evidentiary hearing before the court which issued such subpoena or a court having jurisdiction under this section, the court finds that:

(1) A primary purpose or effect of requiring such person to so testify or to produce such objects before the grand jury is or will be to secure testimony for trial for which the defendant has already been charged by information, indictment, or criminal complaint;

(2) Compliance with a subpoena would be unreasonable or oppressive;

(3) A primary purpose of the issuance of the subpoena is to harass the witness;

(4) The witness has already been confined or fined under this section for his or her refusal to testify before any grand jury investigating the same transaction, set of transactions, event, or events; or

(5) The witness has not been advised of his or her rights as specified in subsection (2) of section 29-1409.

Sec. 9. That section 29-1416, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1416. (1) At least twelve of the grand jurors must concur in the finding of an indictment; when so found the foreman shall endorse on such indictment the words A true bill, and subscribe his or her name thereto as foreman.

(2) Once a grand jury has returned a no true bill based upon a transaction, set of transactions, event, or events, a grand jury inquiry into the same transaction or events shall not be initiated unless the court finds, upon a proper showing by the prosecuting attorney, that the prosecuting attorney has discovered additional evidence relevant to such inquiry.

Sec. 10. That section 29-1418, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1418. (1) Indictments returned by a grand jury shall be presented by their foreman to the court, and shall be filed with the clerk, who shall endorse

thereon the day of their filing, and shall enter each case upon the appearance docket, and also upon the trial docket of the term, as soon as the parties indicted have been arrested.

(2) Any grand jury may indict a person for an offense when the evidence before such grand jury provides probable cause to believe that such person committed such offense.

(3) The district court before which the indicted defendant is to be tried shall dismiss any indictment of the grand jury if such district court finds, upon the filing of a motion by the indicted defendant based upon the grand jury record without argument or further evidence, that the grand jury finding of probable cause is not supported by the record.

(4) Any other motions testing the validity of the indictment may be heard by the court based only on the record and argument of counsel, unless there is cause shown for the need for additional evidence.

Sec. 11. The report of the grand jury shall not be made public except when the report is filed, including indictments, pursuant to section 29-1407, Reissue Revised Statutes of Nebraska, 1943, or when required by statute or except that all of the report or a portion thereof may be released if the judge of the district court finds that such a release will exonerate a person or persons who have requested such a release.

Sec. 12. That original sections 29-1406, 29-1407, 29-1409, 29-1411, 29-1412, 29-1416, and 29-1418, Reissue Revised Statutes of Nebraska, 1943, are repealed.