

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1041

Introduced by Pansing Brooks, 28.

Read first time January 16, 2020

Committee:

1 A BILL FOR AN ACT relating to criminal procedure; to amend section
2 29-1406, Reissue Revised Statutes of Nebraska, and section
3 29-1407.01, Revised Statutes Cumulative Supplement, 2018; to change
4 provisions relating to grand jury transcripts; to provide for rules;
5 to harmonize provisions; to provide a duty for the Revisor of
6 Statutes; and to repeal the original sections.

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

1 Section 1. 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 or, in the case of a
12 grand jury impaneled pursuant to subsection (4) of section 29-1401, its
13 duty to inquire into offenses against the criminal laws of the State of
14 Nebraska regarding the death of a person who has died while being
15 apprehended or while in the custody of a law enforcement officer or
16 detention personnel;

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

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

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

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

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

1 (g) In the case of a grand jury impaneled pursuant to subsection (4)
2 of section 29-1401, if the grand jury returns a no true bill:

3 (i) The grand jury shall create a grand jury report with the
4 assistance of the prosecuting attorney. The grand jury report shall
5 briefly provide an explanation of the grand jury's findings and any
6 recommendations the grand jury determines to be appropriate based upon
7 the grand jury's investigation and deliberations; and

8 (ii) The no true bill and the grand jury report shall be filed with
9 the court, where they shall be available for public review, along with
10 the grand jury transcript provided for in subsection (1) of section 3 of
11 this act subdivision (2)(b) of section 29-1407.01.

12 Sec. 2. Section 29-1407.01, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

14 29-1407.01 (1) A certified or authorized reporter shall be present
15 at all grand jury sessions. All grand jury proceedings and testimony from
16 commencement to adjournment shall be reported.

17 (2) (2)(a) Except as provided in section 3 of this act for a grand
18 jury impaneled pursuant to subsection (4) of section 29-1401 subdivision
19 (2)(b) of this section, the reporter's stenography notes and tape
20 recordings shall be preserved and sealed and any transcripts which may be
21 prepared shall be preserved, sealed, and filed with the court. No release
22 or destruction of the notes or transcripts shall occur without prior
23 court approval.

24 ~~(b) In the case of a grand jury impaneled pursuant to subsection (4)~~
25 ~~of section 29-1401, a transcript, including any exhibits of the grand~~
26 ~~jury proceedings, shall be prepared at court expense and shall be filed~~
27 ~~with the court where it shall be available for public review. Such~~
28 ~~transcript shall not include the names of grand jurors or their~~
29 ~~deliberations.~~

30 (3) Upon application by the prosecutor or by any witness after
31 notice to the prosecutor and a hearing, the court, for good cause, may

1 enter an order to prepare furnish to that witness a transcript of such
2 witness's his or her own grand jury testimony and to provide a copy of
3 such transcript to such prosecutor or witness. If such witness is
4 proceeding in forma pauperis, such witness shall be furnished, upon
5 request, a copy of such transcript and shall not pay a fee for the
6 preparation of the transcript or the copy or exhibits relating thereto.

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

15 (5) Any transcript or copy of a transcript prepared under this
16 section:

17 (a) May be made with or without exhibits, at the court's discretion;
18 and

19 (b) Shall not include the grand jurors' deliberations or the names
20 of the grand jurors.

21 (6) The Supreme Court shall promulgate rules as necessary to carry
22 out this section.

23 Sec. 3. (1)(a) In the case of a grand jury impaneled pursuant to
24 subsection (4) of section 29-1401, a transcript, including any exhibits
25 of the grand jury proceedings, shall be prepared at court expense and
26 shall be filed with the court. Such transcript shall not include the
27 grand jurors' deliberations or the names of the grand jurors.

28 (b) A transcript prepared under this subsection shall be available
29 for public review upon written request to the clerk of the district
30 court. Such review shall be made at a reasonable time set by the clerk of
31 the district court.

1 (2) Upon application by the prosecutor or by any witness after
2 notice to the prosecutor and a hearing, the court, for good cause, may
3 enter an order to prepare a transcript of such witness's grand jury
4 testimony and to provide a copy of such transcript to such prosecutor or
5 witness. If such witness is proceeding in forma pauperis, such witness
6 shall be furnished, upon request, a copy of such transcript and shall not
7 pay a fee for the preparation of the transcript or the copy.

8 (3) Upon application by any person, notice to the prosecutor, and a
9 hearing, the court may, for good cause shown, enter an order allowing the
10 making of a copy or certified copy of a transcript prepared under this
11 section. If the court enters an order allowing such copy to be made, the
12 court reporter shall prepare such copy at the expense of such person.

13 (4) Any transcript or copy of a transcript prepared under this
14 section:

15 (a) May be made with or without exhibits, at the court's discretion;
16 and

17 (b) Shall not include the grand jurors' deliberations or the names
18 of the grand jurors.

19 (5) The Supreme Court shall promulgate rules as necessary to carry
20 out this section.

21 Sec. 4. The Revisor of Statutes shall assign section 3 of this act
22 to Chapter 29, article 14.

23 Sec. 5. Original section 29-1406, Reissue Revised Statutes of
24 Nebraska, and section 29-1407.01, Revised Statutes Cumulative Supplement,
25 2018, are repealed.