

LEGISLATIVE BILL 72

Approved by the Governor March 30, 1999

Introduced by Chambers, 11; Dw. Pedersen, 39

AN ACT relating to criminal procedure; to amend sections 25-1633, 29-1401, and 29-1502, Reissue Revised Statutes of Nebraska; to change provisions relating to alternate jurors; to change procedures relating to certain grand juries; to change references to names in court proceedings; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 25-1633, Reissue Revised Statutes of Nebraska, is amended to read:

25-1633. If a grand jury shall be required by law, or by order of the judge or judges, for any term of court, it shall be the duty of the jury commissioner to draw out of the box or wheel, containing the names of the grand jury list, in the presence of the judge or judges, forty names of persons. The jury commissioner shall then prepare a list of such names, which list shall contain the ~~Christian given~~ names and surnames of persons named therein, their respective places of residence, and their several occupations. Such list shall then be turned over by the jury commissioner to a board to consist of the jury commissioner, the presiding judge of the district court, and one other person whom the presiding judge shall designate. The presiding judge shall be the ~~chairman~~ chairperson. Such board shall select from the list of forty names, the names of sixteen persons, qualified as grand jurors under this section, and the persons whose names are so selected shall be the grand jurors. Such board shall also select from the list of forty names, the names of three additional persons to serve as alternate jurors. The alternate jurors shall sit with the grand jury and participate in all investigative proceedings to the same extent as the regular grand jurors. Alternate grand jurors shall be permitted to question witnesses, review evidence, and participate in all discussions of the grand jury which occur prior to the conclusion of presentation of evidence. When the grand jury has determined that no additional evidence is necessary for its investigation, the alternate grand jurors shall be separated from the regular grand jurors and shall not participate in any further discussions, deliberations, or voting of the grand jury but shall take no active part, unless one or more of the regular grand jurors is or are excused because of illness or other sufficient reason. Such alternate jurors shall fill vacancies in the order of their selection.

Sec. 2. 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. ~~It shall be mandatory for such district courts to call a grand jury in each case upon the petition of the registered voters of the county of the number of not less than ten percent of the total vote cast for the office of Governor in such county at the most recent general election held for such office.~~

(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 sections 29-1401.01 and 29-1401.02 and is signed 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 ~~an individual~~ 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. 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) 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. Any grand jury called pursuant to this section shall be limited in its charge, powers, duties, proceedings, indictment, and report to the review of the incident or incidents which caused it to be called.

Sec. 3. Section 29-1502, Reissue Revised Statutes of Nebraska, is amended to read:

29-1502. Whenever on trial of any indictment for any offense there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof in the ~~Christian given~~ name or surname, or both ~~Christian given~~ name and surname, or other description whatever of any person whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, such variance shall not be deemed ground for an acquittal of the defendant, unless the court before which the trial shall be had shall find that such variance is material to the merits of the case or may be prejudicial to the defendant.

Sec. 4. Original sections 25-1633, 29-1401, and 29-1502, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 5. Since an emergency exists, this act takes effect when passed and approved according to law.