

## LEGISLATIVE BILL 1000

Approved by the Governor April 13, 2016

Introduced by Mello, 5; Cook, 13; Ebke, 32; Harr, 8; Krist, 10; Morfeld, 46; Seiler, 33; Williams, 36; Chambers, 11.

A BILL FOR AN ACT relating to law enforcement; to amend sections 29-1404, 29-1406, 29-1407.01, and 29-1420, Reissue Revised Statutes of Nebraska, and section 29-1401, Revised Statutes Cumulative Supplement, 2014; to provide for adoption of policies relating to body-worn cameras and eyewitness suspect identifications; to provide and change provisions relating to grand juries; to harmonize provisions; and to repeal the original sections.

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

Section 1. For purposes of sections 1 to 3 of this act, unless the context otherwise requires:

(1) Body-worn camera means a device worn by a peace officer in uniform which has the capability to record both audio and video of an interaction between a peace officer and a member of the public but does not include any device used by a plain clothes officer;

(2) Commission means the Nebraska Commission on Law Enforcement and Criminal Justice;

(3) Law enforcement agency means an agency or department of this state or of any political subdivision of this state which is responsible for the prevention and detection of crime, the enforcement of the penal, traffic, or highway laws of this state or any political subdivision of this state, and the enforcement of arrest warrants. Law enforcement agency includes a police department, an office of a town marshal, an office of a county sheriff, the Nebraska State Patrol, and any department to which a deputy state sheriff is assigned as provided in section 84-106; and

(4) Peace officer means any officer or employee of a law enforcement agency authorized by law to make arrests.

Sec. 2. (1) On or before December 1, 2016, the commission shall develop and distribute a model body-worn camera policy that includes the procedures and provisions required by section 3 of this act. Any law enforcement agency required to adopt a policy under this section that does not develop and adopt its own policy shall adopt the model body-worn camera policy developed by the commission.

(2)(a) Any law enforcement agency which uses body-worn cameras as of the effective date of this act shall, on or before January 1, 2017, adopt a written body-worn camera policy. Such policy shall include procedures and provisions in conformance with the minimum standards set forth in the model body-worn camera policy developed by the commission and may include any other procedures and provisions the law enforcement agency deems appropriate.

(b) Beginning January 1, 2017, any law enforcement agency which uses body-worn cameras shall, prior to commencing such use, adopt a written body-worn camera policy. Such policy shall include procedures and provisions in conformance with the minimum standards set forth in the model body-worn camera policy developed by the commission and may include any other procedures and provisions the law enforcement agency deems appropriate.

(3) The head of a law enforcement agency required to adopt a policy under this section shall provide a copy of such policy to the commission within three months of such policy's adoption.

(4) On or before January 1, 2018, and each January 1 thereafter, when any law enforcement agency required to adopt a policy under this section has made any change to its policy in the preceding year, the head of such agency shall provide an updated copy of such policy to the commission.

Sec. 3. A body-worn camera policy required by section 2 of this act shall include provisions which govern the use of body-worn cameras by peace officers and the retention and disposition of recordings created with such cameras by law enforcement agencies. Such body-worn camera policy shall include, but not be limited to:

(1) A requirement that training be provided to any peace officer who will use a body-worn camera and to any other employee who will come into contact with video or audio data recorded by a body-worn camera;

(2) A requirement that recordings created by body-worn cameras shall be retained for a minimum period of ninety days from the date of recording. Such recordings shall be retained for more than ninety days if required by the following circumstances:

(a) Upon notice to the law enforcement agency of a criminal or civil court proceeding in which the recording may have evidentiary value or in which the recording is otherwise involved, the recording shall be retained until final judgment has been entered in the proceeding;

(b) Upon notice to the law enforcement agency of a disciplinary proceeding against an employee of the agency in which the recording may have evidentiary value or in which the recording is otherwise involved, the recording shall be retained until a final determination has been made in such proceeding; and

(c) If the recording is part of a criminal investigation that has not resulted in an arrest or prosecution, the recording shall be retained until the investigation is officially closed or suspended; and

(3) A procedure governing the destruction of recordings after the retention period described in subdivision (2) of this section has elapsed.

Sec. 4. (1) On or before January 1, 2017, the Nebraska State Patrol, each county sheriff, each city or village police department, and any other law enforcement agency in this state which conducts eyewitness suspect identifications shall adopt a written policy on eyewitness suspect identifications and provide a copy of such policy to the Nebraska Commission on Law Enforcement and Criminal Justice. The policy shall include the minimum standards developed by the commission relating to the following: (a) Standards which describe the administration of a lineup, (b) procedures governing the instructions given by a peace officer to an eyewitness, and (c) procedures for documentation of the eyewitness's level of certainty of an identification.

(2) The Nebraska Commission on Law Enforcement and Criminal Justice shall distribute a standard model written policy on suspect identification by eyewitnesses. Any law enforcement agency described in subsection (1) of this section which fails to adopt its own policy as required by this section shall adopt the commission's standard model written policy.

Sec. 5. Section 29-1401, Revised Statutes Cumulative Supplement, 2014, 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. 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 a prosecuting attorney selected pursuant to subdivision (b) of this subsection; and

(b) The county attorney or a member of his or her staff shall be the prosecuting attorney. Except as provided in subdivision (d) of this subsection, the prosecuting attorney shall, as soon as practicable, select a team of three peace officers trained to investigate homicides. At least two of such investigators shall be from agencies other than the agency under which the death occurred. The team shall examine all evidence concerning the cause of death and present the findings of its investigation to the prosecuting attorney;

(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) In those cases in which the death has been certified by a licensed practicing physician to be from natural causes, the county attorney or a member of his or her staff may present such finding to a grand jury without selecting a three-member team of peace officers to investigate.

Sec. 6. Section 29-1404, Reissue Revised Statutes of Nebraska, is amended to read:

29-1404 (1) Except as provided in subsection (2) of this section, when the foreperson foreman shall be appointed, an oath or affirmation shall be administered to him or her in the following words: Saving yourself and fellow jurors, you, as foreperson foreman of this grand inquest, shall diligently inquire and true presentment make, of all such matters and things as shall be given you in charge or otherwise come to your knowledge, touching the present service. The counsel of the state, your own and your fellows, you shall keep secret, unless called on in a court of justice to make disclosures. You shall present no person through malice, hatred, or ill will, nor shall you leave any person unrepresented through fear, favor, or affection, or for any reward or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding.

(2) For grand juries impaneled pursuant to subsection (4) of section 29-1401, when the foreperson shall be appointed, an oath or affirmation shall be administered to him or her in the following words: Saving yourself and fellow jurors, you, as foreperson of this grand inquest, shall diligently inquire and true presentment make, of all such matters and things as shall be given you in charge or otherwise come to your knowledge, touching the present service. The counsel of the state, your own and your fellows, you shall keep

secret during the course of the impaneled grand jury's investigation and deliberations, unless called on in a court of justice to make disclosures. You shall present no person through malice, hatred, or ill will, nor shall you leave any person unrepresented through fear, favor, or affection, or for any reward or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding.

Sec. 7. Section 29-1406, Reissue Revised Statutes of Nebraska, is amended to read:

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

(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; ~~and -~~

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

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

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

Sec. 8. Section 29-1407.01, Reissue Revised Statutes of Nebraska, is amended to read:

29-1407.01 (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.

(2)(a) Except as provided in subdivision (2)(b) of this section, the 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.

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

~~(3)~~ (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.

~~(4)~~ (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. 9. Section 29-1420, Reissue Revised Statutes of Nebraska, is amended to read:

29-1420 (1) Except as provided in subdivision (2)(g) of section 29-1406, the The report of the grand jury shall not be made public except when the report is filed, including indictments, 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.

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

Sec. 10. Original sections 29-1404, 29-1406, 29-1407.01, and 29-1420, Reissue Revised Statutes of Nebraska, and section 29-1401, Revised Statutes

Cumulative Supplement, 2014, are repealed.