

LEGISLATIVE BILL 568

Approved by the Governor April 23, 1971

Introduced by Roland A. Luedtke, 28th District

AN ACT relating to criminal procedure; to provide authorization and a procedure for judges and magistrates to issue orders for the purpose of obtaining identifying physical characteristics and nontestimonial identification of persons under certain circumstances; and to declare an emergency. Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, the terms identifying physical characteristics or identification procedures shall include but not be limited to fingerprints, palm prints, footprints, measurements, handwriting exemplars, lineups, hand printing, voice samples, blood samples, urine samples, saliva samples, hair samples, comparative personal appearance, and photographs of an individual.

Sec. 2. Judges and magistrates are authorized to issue orders authorizing identification procedures for the purpose of obtaining identifying physical characteristics in accordance with the procedures specified in this act. The order may be issued by any judge of the district or Supreme Court for service and execution anywhere within the State of Nebraska. An order may also be issued by any county judge or municipal court judge or other magistrate for service within the county of issuance. Any court issuing such an order shall receive a fee of two dollars for all services connected therewith, including the taking of necessary acknowledgments and the filing of the return.

Sec. 3. The order may issue upon a showing by affidavit of a peace officer that (1) there is probable cause to believe that an offense has been committed; (2) that procurement of evidence of identifying physical characteristics through nontestimonial identification procedures from an identified or particularly described individual may contribute to the identification of the individual who committed such offense; and (3) that the identified or described individual has refused, or there is reason to believe he will refuse, to voluntarily provide the desired evidence of identifying physical characteristics. The contents of the affidavit may be supplemented or augmented by the affidavits of other

persons or by sworn testimony given to the issuing judge or magistrate.

Sec. 4. No order shall be required or necessary where the individual has been lawfully arrested, nor under any circumstances where peace officers may otherwise lawfully require or request the individual to provide evidence of identifying physical characteristics, and no order shall be required in the course of trials or other judicial proceedings.

Sec. 5. Any order issued under this act shall specify (1) the character of the alleged criminal offense which is the subject of the application; (2) the specific type or types of identifying physical characteristic evidence which are sought; (3) the identity or description of the individual who may be detained for obtaining such evidence; (4) the name and official status of the peace officer or officers authorized to obtain such evidence and to effectuate any detention which may be necessary to obtain the evidence; (5) the place at which the obtaining of such evidence may be carried out; (6) that the person will be under no legal obligation to submit to any interrogation or to make any statement during the period of his appearance except that required for voice identification; (7) that the individual shall forthwith accompany the officer serving the order for the purpose of carrying out its objectives, or, in the alternative, fixing a time at which the individual shall appear for the purpose of carrying out the objectives of the order; (8) that the person, if he fails to accompany the officer, or to appear at the time fixed, as may be provided, or to otherwise comply with the provisions of the order, shall be guilty of contempt of court and punished accordingly; (9) the period of time during which the named or described individual may be detained for obtaining such evidence, which in no event shall exceed five hours; (10) the period of time, not exceeding fifteen days, during which the order shall continue in force and effect; and (11) any other conditions which the issuing judge or magistrate finds to be necessary to properly protect the rights of the individual who is to supply such evidence.

Sec. 6. A copy of the order shall be given to the individual at the time it is served on him. No more than thirty days after the identification procedures have been carried out, a return of the order shall be made to the issuing court setting forth the type of evidence taken. Where the order is not executed, a return so indicating shall be filed within thirty days

of its issuance.

Sec. 7. The penalty for contempt of court, as provided in this act, shall not exceed thirty days' imprisonment in the county jail.

Sec. 8. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.