

ONE HUNDRED EIGHTH LEGISLATURE

SECOND SESSION

LEGISLATIVE RESOLUTION 325

Introduced by Dungan, 26.

PURPOSE: The purpose of this resolution is to propose an interim study to determine whether changes to the Nebraska statutes relating to pretrial discovery are necessary to accommodate or to provide for parties to inspect or extract information from personal communication devices, computers, and other similar devices.

In Nebraska, the pretrial discovery process is governed mostly by statute. Various statutes provide that both prosecution and defense are entitled to inspect, investigate, and copy or receive copies of anticipated evidence or information material to a criminal case from opposing parties, witnesses, or other sources. Section 29-1913 provides that in certain instances if the prosecutor intends to use evidence consisting of scientific tests or analyses of ballistics, firearms identification, fingerprints, blood, semen, or other stains, a defendant may request the court to order the prosecutor to make available such evidence necessary to allow the defense to conduct like tests or analyses with its own experts. Section 29-1913 does not clearly provide for a defendant to request to inspect or extract material information from personal communication devices, computers, and other similar devices which the prosecutor may intend to use evidence from or which the state may have in its possession.

Nebraska has a statutory mechanism for postconviction relief, found in sections 29-3001 to 29-3004. The postconviction relief statutes do not provide for statutory discovery or allow for the typical discovery process available in other proceedings.

This study should consider whether changes to the Nebraska statutes relating to pretrial discovery are necessary to accommodate or to provide for

parties to utilize discovery during the postconviction relief process.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Judiciary Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.