

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1083

Introduced by Hansen, 26.

Read first time January 17, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend section
2 29-1912, Reissue Revised Statutes of Nebraska; to change provisions
3 relating to discovery in criminal cases; and to repeal the original
4 section.

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

1 Section 1. Section 29-1912, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-1912 (1) When a defendant is charged with a felony or when a
4 defendant is charged with a misdemeanor or a violation of a city or
5 village ordinance for which imprisonment is a possible penalty, he or she
6 may request the court where the case is to be tried, at any time after
7 the filing of the indictment, information, or complaint, to order the
8 prosecuting attorney to permit the defendant to inspect and copy or
9 photograph:

10 (a) The defendant's statement, if any. For purposes of this
11 subdivision, statement means a written statement made by the defendant
12 and signed or otherwise adopted or approved by him or her, or a
13 stenographic, mechanical, electrical, or other recording, or a
14 transcription thereof, which is a substantially verbatim recital of an
15 oral statement made by the defendant to an agent of the prosecution,
16 state, or political subdivision thereof, and recorded contemporaneously
17 with the making of such oral statement;

18 (b) The defendant's prior criminal record, if any;

19 (c) The defendant's recorded testimony before a grand jury;

20 (d) The names, ~~and~~ addresses, telephone numbers, and email
21 addresses, if known, of witnesses on whose evidence the charge is based;

22 (e) The results and reports of physical or mental examinations, and
23 of scientific tests, or experiments made in connection with the
24 particular case, or copies thereof;

25 (f) Documents, papers, books, accounts, letters, photographs,
26 objects, or other tangible things of whatsoever kind or nature which
27 could be used as evidence by the prosecuting authority;

28 (g) The known criminal history of a jailhouse witness;

29 (h) Any deal, promise, inducement, or benefit that the prosecuting
30 attorney or any person acting on behalf of the prosecuting attorney has
31 knowingly made or may make in the future to the jailhouse witness;

1 (i) The specific statements allegedly made by the defendant against
2 whom the jailhouse witness will testify and the time, place, and manner
3 of the defendant's disclosures;

4 (j) The case name and jurisdiction of any criminal cases known to
5 the prosecuting attorney in which a jailhouse witness testified about
6 statements made by another criminal defendant that were disclosed to the
7 jailhouse witness while he or she was a jailhouse witness and whether the
8 jailhouse witness received any deal, promise, inducement, or benefit in
9 exchange for or subsequent to such testimony; and

10 (k) Any occasion known to the prosecuting attorney in which the
11 jailhouse witness recanted testimony about statements made by another
12 criminal defendant that were disclosed to the jailhouse witness while he
13 or she was a jailhouse witness and, if any are known, a transcript or
14 copy of such recantation.

15 (2) The court may issue such an order pursuant to ~~the provisions of~~
16 this section. In the exercise of its judicial discretion, the court shall
17 consider, among other things, whether:

18 (a) The request is material to the preparation of the defense;

19 (b) The request is not made primarily for the purpose of harassing
20 the prosecution or its witnesses;

21 (c) The request, if granted, would not unreasonably delay the trial
22 of the offense and an earlier request by the defendant could not have
23 reasonably been made;

24 (d) There is no substantial likelihood that the request, if granted,
25 would preclude a just determination of the issues at the trial of the
26 offense; or

27 (e) The request, if granted, would not result in the possibility of
28 bodily harm to, or coercion of, witnesses.

29 (3) Whenever the court refuses to grant an order pursuant to ~~the~~
30 ~~provisions of~~ this section, it shall render its findings in writing,
31 together with the facts upon which the findings are based.

1 (4) Whenever the prosecuting attorney believes that the granting of
2 an order under the provisions of this section will result in the
3 possibility of bodily harm to witnesses or that witnesses will be
4 coerced, the court may permit him or her to make such a showing in the
5 form of a written statement to be inspected by the court alone. The
6 statement shall be sealed and preserved in the records of the court to be
7 made available to the appellate court in the event of an appeal by the
8 defendant.

9 (5) For purposes of subdivisions (1)(g) through (k) of this section,
10 jailhouse witness means a person in the physical custody of any jail or
11 correctional institution as (a) an accused defendant, (b) a convicted
12 defendant awaiting sentencing, or (c) a convicted defendant serving a
13 sentence of incarceration, at the time the statements the jailhouse
14 witness will testify about were disclosed.

15 Sec. 2. Original section 29-1912, Reissue Revised Statutes of
16 Nebraska, is repealed.