

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 496

Introduced by Wayne, 13.

Read first time January 22, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-916.01, 28-919, 28-922, 29-1912, 29-1914, 29-1916, 29-1917,
3 29-1918, 29-1919, 29-1923, and 29-1924, Reissue Revised Statutes of
4 Nebraska; to change penalties for tampering with witnesses or
5 informants, jury tampering, and tampering with physical evidence; to
6 change provisions relating to discovery in criminal cases; to
7 redefine terms; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-916.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 28-916.01 As used in this section and sections 28-915, 28-915.01,
4 ~~and 28-919, and 28-922,~~ unless the context otherwise requires:

5 (1) Administrative proceeding shall mean any proceeding, other than
6 a judicial proceeding, the outcome of which is required to be based on a
7 record or documentation prescribed by law, or in which law or regulation
8 is particularized in application to individuals;

9 (2) Benefit shall mean gain or advantage, or anything regarded by
10 the beneficiary as gain or advantage, including benefit to any other
11 person or entity in whose welfare he or she is interested, but not an
12 advantage promised generally to a group or class of voters as a
13 consequence of public measures which a candidate engages to support or
14 oppose;

15 (3) Government shall include any branch, subdivision, or agency of
16 the government of the state or any locality within it;

17 (4) Harm shall mean loss, disadvantage, or injury, or anything so
18 regarded by the person affected, including loss, disadvantage, or injury
19 to any other person or entity in whose welfare he or she is interested;

20 (5) Pecuniary benefit shall mean benefit in the form of money,
21 property, commercial interests, or anything else the primary significance
22 of which is economic gain;

23 (6) Public servant shall mean any officer or employee of government,
24 including legislators and judges, and any person participating as juror,
25 advisor, consultant, or otherwise, in performing a governmental function,
26 but the term shall not include witnesses;

27 (7) Official proceeding shall mean a proceeding heard or which may
28 be heard before any legislative, judicial, administrative, or other
29 governmental agency or official authorized to take evidence under oath,
30 including any referee, hearing examiner, commissioner, notary, or other
31 person taking testimony or deposition in connection with any such

1 proceeding; and

2 (8) Statement shall mean any representation, but shall include a
3 representation of opinion, belief, or other state of mind only if the
4 representation clearly relates to state of mind apart from or in addition
5 to any facts which are the subject of the representation.

6 Sec. 2. Section 28-919, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 28-919 (1) A person commits the offense of tampering with a witness
9 or informant if, believing that an official proceeding or investigation
10 of a criminal or civil matter is pending or about to be instituted, he or
11 she attempts to induce or otherwise cause a witness or informant to:

12 (a) Testify or inform falsely;

13 (b) Withhold any testimony, information, document, or thing;

14 (c) Elude legal process summoning him or her to testify or supply
15 evidence; or

16 (d) Absent himself or herself from any proceeding or investigation
17 to which he or she has been legally summoned.

18 (2) A person commits the offense of jury tampering if, with intent
19 to influence a juror's vote, opinion, decision, or other action in a
20 case, he or she attempts directly or indirectly to communicate with a
21 juror other than as a part of the proceedings in the trial of the case.

22 (3) Tampering with witnesses or informants is a Class IV felony,
23 except that if such offense involves a pending criminal proceeding which
24 alleges a violation of another offense classified as a Class I, IA, IB,
25 IC, ID, or II felony, the offense is a Class II felony.

26 (4) Jury tampering is a Class IV felony, except that if such offense
27 involves a pending criminal proceeding which alleges a violation of
28 another offense classified as a Class I, IA, IB, IC, ID, or II felony,
29 the offense is a Class II felony.

30 Sec. 3. Section 28-922, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 28-922 (1) A person commits the offense of tampering with physical
2 evidence if, believing that an official proceeding is pending or about to
3 be instituted and acting without legal right or authority, he or she:

4 (a) Destroys, mutilates, conceals, removes, or alters physical
5 evidence with the intent to impair its verity or availability in the
6 pending or prospective official proceeding; or

7 (b) Knowingly makes, presents, or offers any false physical evidence
8 with intent that it be introduced in the pending or prospective official
9 proceeding.

10 (2) Physical evidence, as used in this section, shall mean any
11 article, object, document, record, or other thing of physical substance.

12 (3) Tampering with physical evidence is a Class IV felony, except
13 that if such offense involves a pending criminal proceeding which alleges
14 a violation of another offense classified as a Class I, IA, IB, IC, ID,
15 or II felony, the offense is a Class II felony.

16 Sec. 4. Section 29-1912, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 29-1912 (1) When a defendant is charged with a felony or when a
19 defendant is charged with a misdemeanor or a violation of a city or
20 village ordinance for which imprisonment is a possible penalty, he or she
21 may request the court where the case is to be tried, at any time after
22 the filing of the indictment, information, or complaint, to order the
23 prosecuting attorney to permit the defendant to inspect and copy or
24 photograph:

25 (a) The defendant's statement, if any. For purposes of this
26 subdivision, statement includes any of the following which relate to the
27 case:

28 (i) Written or recorded statements;

29 (ii) Written summaries of oral statements; and

30 (iii) The substance of oral statements ~~means a written statement~~
31 ~~made by the defendant and signed or otherwise adopted or approved by him~~

1 ~~or her, or a stenographic, mechanical, electrical, or other recording, or~~
2 ~~a transcription thereof, which is a substantially verbatim recital of an~~
3 ~~oral statement made by the defendant to an agent of the prosecution,~~
4 ~~state, or political subdivision thereof, and recorded contemporaneously~~
5 ~~with the making of such oral statement;~~

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

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

8 (d) The names and addresses of witnesses on whose evidence the
9 charge is based;

10 (e) The results and reports, in any form, of physical or mental
11 examinations, and of scientific tests, or experiments made in connection
12 with the particular case, or copies thereof;

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

16 (g) Reports developed or received by law enforcement agencies when
17 such reports directly relate to the investigation of the underlying
18 charge or charges;

19 (h) Any law enforcement agency reports or records relating to
20 prospective jurors;

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

22 (j) (h) Any deal, promise, inducement, or benefit that the
23 prosecuting attorney or any person acting on behalf of the prosecuting
24 attorney has knowingly made or may make in the future to the jailhouse
25 witness;

26 (k) (i) The specific statements allegedly made by the defendant
27 against whom the jailhouse witness will testify and the time, place, and
28 manner of the defendant's disclosures;

29 (l) (j) The case name and jurisdiction of any criminal cases known
30 to the prosecuting attorney in which a jailhouse witness testified about
31 statements made by another criminal defendant that were disclosed to the

1 jailhouse witness while he or she was a jailhouse witness and whether the
2 jailhouse witness received any deal, promise, inducement, or benefit in
3 exchange for or subsequent to such testimony; and

4 (m) (k) Any occasion known to the prosecuting attorney in which the
5 jailhouse witness recanted testimony about statements made by another
6 criminal defendant that were disclosed to the jailhouse witness while he
7 or she was a jailhouse witness and, if any are known, a transcript or
8 copy of such recantation.

9 (2) Whenever the prosecuting attorney believes that the granting of
10 a request under subsection (1) of this section will result in the
11 possibility of bodily harm to witnesses or that witnesses will be
12 coerced, the prosecuting attorney may file with the court an objection to
13 such request. The objection shall specify the items or information
14 objected to and provide specific reasons for each item or information.

15 (3)(a) If the prosecuting attorney does not object to the request
16 under subsection (1) of this section, the court shall issue an order
17 permitting the defendant to inspect and copy or photograph the materials
18 described in subsection (1) of this section.

19 (b) If the prosecuting attorney objects to the request under
20 subsection (1) of this section, the (2) The court may issue such an order
21 pursuant to the provisions of this section. In the exercise of its
22 judicial discretion, the court shall consider, among other things,
23 whether:

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

25 (ii) (b) The request is not made primarily for the purpose of
26 harassing the prosecution or its witnesses;

27 (iii) (c) The request, if granted, would not unreasonably delay the
28 trial of the offense and an earlier request by the defendant could not
29 have reasonably been made;

30 (iv) (d) There is no substantial likelihood that the request, if
31 granted, would preclude a just determination of the issues at the trial

1 of the offense; or

2 ~~(v) (e)~~ The request, if granted, would not result in the possibility
3 of bodily harm to, or coercion of, witnesses.

4 ~~(4) (3)~~ Whenever the prosecuting attorney objects to a request under
5 subsection (1) of this section, the court refuses to grant an order
6 pursuant to the provisions of this section, it shall render its findings
7 in writing together with the facts upon which the findings are based.

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

16 (5) For purposes of subdivisions ~~(1)(g) through (k)~~ of this section,
17 jailhouse witness means a person in the physical custody of any jail or
18 correctional institution as (a) an accused defendant, (b) a convicted
19 defendant awaiting sentencing, or (c) a convicted defendant serving a
20 sentence of incarceration, at the time the statements the jailhouse
21 witness will testify about were disclosed.

22 Sec. 5. Section 29-1914, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 29-1914 Whenever an order is issued pursuant to the provisions of
25 section 29-1912 or 29-1913, it shall be limited to items or information
26 that are: within

27 (1) Within the possession, custody, or control of the state or local
28 subdivisions of government or to which the state or local subdivisions of
29 government have access; and , the existence of which is known

30 (2) Known to exist by the prosecution or that, by the exercise of
31 due diligence, may become known to the prosecution.

1 Sec. 6. Section 29-1916, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-1916 (1) Whenever the court issues an order pursuant to the
4 provisions of sections 29-1912 and 29-1913, the court may condition its
5 order by requiring the defendant to grant the prosecution like access to
6 comparable items or information included within the defendant's request
7 which:

8 (a) Are in the possession, custody, or control of the defendant or
9 to which the defendant has access;

10 (b) The defendant intends to produce at the trial; and

11 (c) Are material to the preparation of the prosecution's case.

12 (2) Whenever a defendant is granted an order under ~~the provisions of~~
13 sections 29-1912 to 29-1921, the defendant ~~he~~ shall be deemed to have
14 waived the ~~his~~ privilege of self-incrimination for the purposes of the
15 operation of ~~the provisions of~~ this section.

16 Sec. 7. Section 29-1917, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 29-1917 (1) Except as provided in section 29-1926, at any time after
19 the filing of an indictment or information in a felony prosecution, the
20 prosecuting attorney or the defendant may request the court to allow the
21 taking of a deposition of any person other than the defendant who may be
22 a witness in the trial of the offense. The court may order the taking of
23 the deposition when it finds the testimony of the witness:

24 (a) May be material or relevant to the issue to be determined at the
25 trial of the offense; or

26 (b) May be of assistance to the parties in the preparation of their
27 respective cases.

28 (2) An order granting the taking of a deposition shall include the
29 time and place for taking such deposition and such other conditions as
30 the court determines to be just.

31 (3) The proceedings in taking the deposition of a witness pursuant

1 to this section and returning it to the court shall be governed in all
2 respects as the taking of depositions in civil cases, including section
3 25-1223.

4 (4) A deposition taken pursuant to this section may be used at the
5 trial by any party solely for the purpose of contradicting or impeaching
6 the testimony of the deponent as a witness.

7 Sec. 8. Section 29-1918, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 29-1918 If, subsequent to compliance with an order for discovery
10 under the provisions of sections 29-1912 to 29-1921, and prior to or
11 during trial, a party discovers additional material which the party he
12 would have been under a duty to disclose or produce at the time of such
13 previous compliance, the party he shall promptly notify the other party
14 or the other party's ~~his~~ attorney and the court of the existence of the
15 additional material. Such notice shall be given at the time of the
16 discovery of such additional material.

17 Sec. 9. Section 29-1919, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 29-1919 If, at any time during the course of the proceedings it is
20 brought to the attention of the court that a party has failed to comply
21 with ~~the provisions of~~ sections 29-1912 to 29-1921 or an order issued
22 pursuant to ~~the provisions of~~ sections 29-1912 to 29-1921, the court may:

23 (1) Order such party to permit the discovery or inspection of
24 materials not previously disclosed;

25 (2) Grant a continuance;

26 (3) Prohibit the party from calling a witness not disclosed or
27 introducing in evidence the material not disclosed; or

28 (4) Enter such other order as it deems just under the circumstances,
29 including, but not limited to, an order of dismissal, with or without
30 prejudice, of the charge or charges pending against the defendant.

31 Sec. 10. Section 29-1923, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 29-1923 If, subsequent to compliance with an order issued pursuant
3 to section 29-1922, and prior to or during trial, the prosecuting
4 authority discovers any additional statement made by the defendant or the
5 name of any eyewitness who has identified the defendant at a lineup or
6 showup previously requested or ordered which is subject to discovery or
7 inspection under section 29-1922, he or she shall promptly notify the
8 defendant or his or her attorney or the court of the existence of this
9 additional material. Such notice shall be given at the time of the
10 discovery of such additional material. If at any time during the course
11 of the proceedings it is brought to the attention of the court that the
12 prosecuting authority has failed to comply with this section or with an
13 order issued pursuant to section 29-1922, the court may order the
14 prosecuting authority to permit the discovery or inspection of materials
15 or witnesses not previously disclosed, grant a continuance, or prohibit
16 the prosecuting authority from introducing in evidence the material or
17 the testimony of the witness or witnesses not disclosed, or it may enter
18 such other order as it deems just under the circumstances, including, but
19 not limited to, an order of dismissal, with or without prejudice, of the
20 charge or charges pending against the defendant.

21 Sec. 11. Section 29-1924, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 29-1924 For purposes of ~~The term statement as used in~~ sections
24 29-1922 and 29-1923, statement made by the defendant includes any of the
25 following statements made by the defendant which relate to the case:

26 (1) Written or recorded statements;

27 (2) Written summaries of oral statements; and

28 (3) The substance of oral statements shall mean ~~(1) a written~~
29 ~~statement made by such defendant and signed or otherwise adopted or~~
30 ~~approved by him or her; or (2) a stenographic, mechanical, electrical, or~~
31 ~~other recording, or a transcription thereof, which is a substantially~~

1 ~~verbatim recital of an oral statement made by such defendant to a peace~~
2 ~~officer or prosecuting authority and recorded contemporaneously with the~~
3 ~~making of such oral statement.~~

4 Sec. 12. Original sections 28-916.01, 28-919, 28-922, 29-1912,
5 29-1914, 29-1916, 29-1917, 29-1918, 29-1919, 29-1923, and 29-1924,
6 Reissue Revised Statutes of Nebraska, are repealed.