

LEGISLATIVE BILL 496

Approved by the Governor May 08, 2019

Introduced by Wayne, 13.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-916.01, 28-919, 28-922, 29-1912, 29-1914, 29-1916, 29-1917, 29-1918, 29-1919, 29-1923, and 29-1924, Reissue Revised Statutes of Nebraska; to change penalties for tampering with witnesses or informants, jury tampering, and tampering with physical evidence; to change provisions relating to discovery in criminal cases; to redefine terms; to harmonize provisions; and to repeal the original sections.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Testify or inform falsely;

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

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

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

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

(3) Tampering with witnesses or informants is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified: -

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

(4) Jury tampering is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified as a Class II felony or a higher classification, the offense is a Class II felony.

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

28-922 (1) A person commits the offense of tampering with physical

evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

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

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

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

(3) Tampering with physical evidence is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified: -

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

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

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

(a) The defendant's statement, if any. For purposes of this subdivision, statement includes any of the following which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

(i) Written or recorded statements;

(ii) Written summaries of oral statements; and

(iii) The substance of oral statements means a written statement made by the defendant and signed or otherwise adopted or approved by him or her, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the defendant to an agent of the prosecution, state, or political subdivision thereof, and recorded contemporaneously with the making of such oral statement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Directly relate to the investigation of the underlying charge or charges in the case;

(2) Are within the possession, custody, or control of the state or local subdivisions of government; and, the existence of which is known

(3) Are known to exist by the prosecution or that, by the exercise of due diligence, may become known to the prosecution.

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

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

(a) Are in the possession, custody, or control of the defendant;

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

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

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

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

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

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

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

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

(3) The proceedings in taking the deposition of a witness pursuant to this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases, including section 25-1223.

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

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

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

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

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

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

(2) Grant a continuance;

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

(4) Enter such other order as it deems just under the circumstances.

Sec. 10. Section 29-1923, Reissue Revised Statutes of Nebraska, is amended to read:

29-1923 If, subsequent to compliance with an order issued pursuant to section 29-1922, and prior to or during trial, the prosecuting authority discovers any additional statement made by the defendant or the name of any

eyewitness who has identified the defendant at a lineup or showup previously requested or ordered which is subject to discovery or inspection under section 29-1922, he or she shall promptly notify the defendant or his or her attorney or the court of the existence of this additional material. Such notice shall be given at the time of the discovery of such additional material. If at any time during the course of the proceedings it is brought to the attention of the court that the prosecuting authority has failed to comply with this section or with an order issued pursuant to section 29-1922, the court may order the prosecuting authority to permit the discovery or inspection of materials or witnesses not previously disclosed, grant a continuance, or prohibit the prosecuting authority from introducing in evidence the material or the testimony of the witness or witnesses not disclosed, or it may enter such other order as it deems just under the circumstances.

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

29-1924 For purposes of The term statement as used in sections 29-1922 and 29-1923, statement made by the defendant includes any of the following statements made by the defendant which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

(1) Written or recorded statements;

(2) Written summaries of oral statements; and

(3) The substance of oral statements shall mean (1) a written statement made by such defendant and signed or otherwise adopted or approved by him or her; or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by such defendant to a peace officer or prosecuting authority and recorded contemporaneously with the making of such oral statement.

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