

ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015
COMMITTEE STATEMENT
LB299

Hearing Date: Friday January 30, 2015
Committee On: Judiciary
Introducer: Schumacher
One Liner: Change provisions relating to admission of evidence of alibi

Roll Call Vote - Final Committee Action:
Indefinitely postponed

Vote Results:

| | | |
|----------------------------|---|--------------------------------------------------------------------------|
| Aye: | 7 | Senators Chambers, Coash, Ebke, Krist, Morfeld, Pansing Brooks, Williams |
| Nay: | 1 | Senator Seiler |
| Absent: | | |
| Present Not Voting: | | |

Verbal Testimony:

Proponents:

SEN. PAUL SCHUMACHER
NATHAN COX

Representing:

INTRODUCER
NE COUNTY ATTORNEY ASSOCIATION

Opponents:

MANDY GRUHLKEY
JOHN BERRY

Representing:

NCDA
NCDA

Neutral:

Representing:

Summary of purpose and/or changes:

LB299 would amend Sec. 29-1927 to create a new procedure for a defendant in a criminal trial to follow when offering evidence regarding an alibi. The language of LB299 tracks the language of Rule 12.1 of the Federal Rules of Criminal Procedure.

Under the process proposed by LB299, a prosecutor may request that a defendant notify the government of the defendant's intention to rely upon an alibi defense. The government's request must advise the defendant of the specific time, date, and place at which the offense is alleged to have been committed. The defendant must then inform the government of the specific place at which he or she claims to have been when the offense is alleged to have been committed, and of the names and addresses of the witnesses on whom he or she intends to rely to establish the alibi. The government must then inform the defendant of the names and addresses of the witnesses on whom it will rely to establish the defendant's presence at the scene of the crime.

If either party fails to comply with the provisions of the rule, the court may exclude the testimony of any witness whose identity is not disclosed. The rule does not attempt to limit the right of the defendant to testify in his or her own behalf.

According to the Advisory Committee notes to Rule 12.1, the major purpose of a "notice of alibi" rule is to prevent unfair surprise to the prosecution. The Federal rule was discussed as early as 1943, but not adopted until 1975. The procedure proposed by LB299 would be a substantial change from current state policy. The very narrow "notice of alibi" provision

in Sec. 29-1927 has not been amended since it was enacted by LB430 (1993), introduced by Senators Abboud, Hohenstein, and Robak. The Nebraska Supreme Court noted in *State v. Woods*, 255 Neb. 755, 764 (Neb. 1998) that "notice-of-alibi statutes are in derogation of the common-law traditions of criminal procedure. The common law recognized no right of discovery in a criminal case by either the prosecution or the defendant."

Les Seiler, Chairperson