

ONE HUNDRED FIFTH LEGISLATURE - SECOND SESSION - 2018
COMMITTEE STATEMENT (CORRECTED)
LB878

Hearing Date: Thursday January 18, 2018
Committee On: Judiciary
Introducer: Ebke
One Liner: Provide requirements for testimony by jailhouse informants

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye: 8 Senators Baker, Chambers, Ebke, Halloran, Hansen, Krist, Morfeld,
Pansing Brooks

Nay:

Absent:

Present Not Voting:

Verbal Testimony:

Proponents:

Senator Laura Ebke
Michelle Feldman
Ellen Reasonover
Amy Miller
Tom Noerrlinger
Kellee Kucera Moreno

Representing:

Introducer
The Innocence Project
self
ACLU of Nebraska
Nebraska Criminal Defense Attorneys Association
self

Opponents:

Don Kleine

Corey O'Brien

Representing:

Douglas County Attorney & Nebraska County Attorneys
Association
Nebraska Attorney General's Office

Neutral:

Representing:

Summary of purpose and/or changes:

This bill would provide that state's attorneys shall track and provide discovery to defense counsel of information relating to use of testimony or information provided by jailhouse informants. Information to be aggregated and disclosed would also include impeachment evidence including (1) the informant's criminal history, (2) prior deals or promises between the state and the informant, (3) specific information on alleged defendant statements against interest made to the informant, (4) case name and jurisdiction information from other cases known to the prosecutor involving the informant, and (5) any instances known to the prosecutor in which the informant recanted prior testimony, with related transcripts. Such disclosures would be required by the prosecutor as soon as is practicable, but no later than thirty days before trial. These disclosures are substantially similar to those already required under the general criminal law statutory discovery provisions in Neb. Rev. Stat. Sec.29-1912(g-k), however LB 878 would set a new mandatory timeline for these disclosures.

The bill includes a provision allowing a prosecutor to initially reveal such information to the court alone if the prosecutor believes that disclosure would result in the possibility of bodily harm to the informant. The court would then review such

information and make a determination about disclosure to the defense, while preserving such information for the record in case of any future appeal.

In addition to mandating the disclosures described above, LB 878 would also provide for pre-trial reliability hearings in cases where the state intended to use the testimony of a jailhouse informant. The prosecution would be required to show by clear and convincing evidence that the informant's testimony is reliable. The bill would also require that if such jailhouse informant testimony is admitted, the jury must be instructed to weigh such testimony appropriately in light of the fact that the informant is receiving a benefit in exchange for his testimony and in consideration of other reliability factors that come to light as a result of the mandated disclosures described above.

Laura Ebke, Chairperson