

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 352

FINAL READING

Introduced by Morfeld, 46; Linehan, 39; McCollister, 20; .

Read first time January 16, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1912, Reissue Revised Statutes of Nebraska; to adopt requirements
- 3 relating to testimony by jailhouse informants; to define terms; to
- 4 create duties for prosecutors and provide for court orders for
- 5 failure to comply with such duties; to change provisions relating to
- 6 requests for discovery by criminal defendants; to harmonize
- 7 provisions; and to repeal the original section.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. For purposes of sections 1 to 6 of this act:

2 (1) Benefit means any plea bargain, bail consideration, reduction or
3 modification of sentence, or any other leniency, immunity, financial
4 payment, reward, or amelioration of current or future conditions of
5 incarceration that has been requested by the jailhouse informant or that
6 has been offered or may be offered in the future to the jailhouse
7 informant in connection with his or her testimony in the criminal
8 proceeding in which the prosecutor intends to call him or her as a
9 witness; and

10 (2) Jailhouse informant means a person who offers testimony about
11 statements made by a suspect or defendant while the suspect or defendant
12 and jailhouse informant were in the custody of any jail or correctional
13 institution and who has requested or received or may in the future
14 receive a benefit in connection with such testimony.

15 Sec. 2. Sections 1 to 6 of this act apply to any case in which a
16 suspect or defendant is charged with a felony.

17 Sec. 3. Each prosecutor's office shall undertake measures to
18 maintain a searchable record of:

19 (1) Each case in which:

20 (a) Trial testimony is offered or provided by a jailhouse informant
21 against a suspect's or defendant's interest; or

22 (b) A statement from a jailhouse informant against a suspect's or
23 defendant's interest is used and a criminal conviction is obtained; and

24 (2) Any benefit requested by or offered or provided to a jailhouse
25 informant in connection with such statement or trial testimony.

26 Sec. 4. (1) Except as provided in subsection (3) of this section,
27 if a prosecutor intends to use the testimony or statement of a jailhouse
28 informant at a defendant's trial, the prosecutor shall disclose to the
29 defense:

30 (a) The known criminal history of the jailhouse informant;

31 (b) Any benefit requested by or offered or provided to a jailhouse

1 informant or that may be offered or provided to the jailhouse informant
2 in the future in connection with such testimony;

3 (c) The specific statements allegedly made by the defendant against
4 whom the jailhouse informant will testify or provide a statement and the
5 time, place, and manner of the defendant's disclosures;

6 (d) The case name and jurisdiction of any criminal case known to the
7 prosecutor in which the jailhouse informant testified or a prosecutor
8 intended to have the jailhouse informant testify about statements made by
9 another suspect or criminal defendant that were disclosed to the
10 jailhouse informant and whether the jailhouse informant requested, was
11 offered, or received any benefit in exchange for or subsequent to such
12 testimony; and

13 (e) Any occasion known to the prosecutor in which the jailhouse
14 informant recanted testimony about statements made by another suspect or
15 defendant that were disclosed to the jailhouse informant and any
16 transcript or copy of such recantation.

17 (2) The prosecutor shall disclose the information described in
18 subsection (1) of this section to the defense as soon as practicable
19 after discovery, but no later than thirty days before trial. If the
20 prosecutor seeks to introduce the testimony of a jailhouse informant that
21 was not known until after such deadline, or if the information described
22 in subsection (1) of this section could not have been discovered or
23 obtained by the prosecutor with the exercise of due diligence at least
24 thirty days before the trial or other criminal proceeding, the court may
25 permit the prosecutor to disclose the information as soon as is
26 practicable after the thirty-day period.

27 (3) If the court finds by clear and convincing evidence that
28 disclosing information listed in subsection (1) of this section will
29 result in the possibility of bodily harm to a jailhouse informant or that
30 a jailhouse informant will be coerced, the court may permit the
31 prosecutor to redact some or all of such information.

1 (4) If, at any time subsequent to the deadline in subsection (2) of
2 this section, the prosecutor discovers additional material required to be
3 disclosed under subsection (1) of this section, the prosecutor shall
4 promptly:

5 (a) Notify the court of the existence of the additional material;
6 and

7 (b) Disclose such material to the defense, except as provided in
8 subsection (3) of this section.

9 Sec. 5. If a jailhouse informant receives leniency related to a
10 pending charge, a conviction, or a sentence for a crime against a victim
11 as defined in section 29-119, in connection with offering or providing
12 testimony against a suspect or defendant, the prosecutor shall notify
13 such victim. Prior to reaching a plea agreement, the prosecutor shall
14 proceed as provided in subsection (1) of section 23-1201. For purposes of
15 this section, leniency means any plea bargain, reduced or dismissed
16 charges, bail consideration, or reduction or modification of sentence.

17 Sec. 6. If, at any time during the course of the proceedings, it is
18 brought to the attention of the court that the prosecutor has failed to
19 comply with section 4 of this act, or an order issued pursuant to this
20 section, the court may:

21 (1) Order the prosecutor to disclose materials not previously
22 disclosed;

23 (2) Grant a continuance;

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

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

27 Sec. 7. Section 29-1912, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 29-1912 (1) When a defendant is charged with a felony or when a
30 defendant is charged with a misdemeanor or a violation of a city or
31 village ordinance for which imprisonment is a possible penalty, he or she

1 may request the court where the case is to be tried, at any time after
2 the filing of the indictment, information, or complaint, to order the
3 prosecuting attorney to permit the defendant to inspect and copy or
4 photograph:

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

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

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

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

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

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

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

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

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

30 ~~(j) The case name and jurisdiction of any criminal cases known to~~
31 ~~the prosecuting attorney in which a jailhouse witness testified about~~

1 ~~statements made by another criminal defendant that were disclosed to the~~
2 ~~jailhouse witness while he or she was a jailhouse witness and whether the~~
3 ~~jailhouse witness received any deal, promise, inducement, or benefit in~~
4 ~~exchange for or subsequent to such testimony; and~~

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

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

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

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

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

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

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

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

27 (4) Whenever the prosecuting attorney believes that the granting of
28 an order under the provisions of this section will result in the
29 possibility of bodily harm to witnesses or that witnesses will be
30 coerced, the court may permit him or her to make such a showing in the
31 form of a written statement to be inspected by the court alone. The

1 statement shall be sealed and preserved in the records of the court to be
2 made available to the appellate court in the event of an appeal by the
3 defendant.

4 (5) This section does not apply to jailhouse informants as defined
5 in section 1 of this act. Sections 1 to 6 of this act govern jailhouse
6 informants. ~~For purposes of subdivisions (1)(g) through (k) of this~~
7 ~~section, jailhouse witness means a person in the physical custody of any~~
8 ~~jail or correctional institution as (a) an accused defendant, (b) a~~
9 ~~convicted defendant awaiting sentencing, or (c) a convicted defendant~~
10 ~~-serving a sentence of incarceration, at the time the statements the~~
11 ~~jailhouse witness will testify about were disclosed.~~

12 Sec. 8. Original section 29-1912, Reissue Revised Statutes of
13 Nebraska, is repealed.