

LEGISLATIVE BILL 110

Approved by the Governor March 9, 1983

Introduced by V. Johnson, 8

AN ACT to amend sections 29-1912, 29-1913, and 29-1922 to 29-1924, Reissue Revised Statutes of Nebraska, 1943, relating to criminal procedure; to provide for discovery in cases as prescribed; to change provisions relating to discovery of statements; and to repeal the original sections.

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

Section 1. That section 29-1912, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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, ~~or~~ 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 shall mean 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 of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof; and

(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 state prosecuting authority.

(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.

Sec. 2. That section 29-1913, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1913. (1) When in any felony prosecution or any prosecution for a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, the evidence of the prosecuting authority state consists of scientific tests or analyses of ballistics, firearms identification, fingerprints, blood, semen, or other stains, upon motion of the defendant the court where the case is to be tried may order the prosecuting attorney to make available to the defense such evidence necessary to allow the defense to conduct like tests or analyses with its own experts. The order shall specify the time, place, and manner of making such tests or analyses by the defense. Such an order shall not be entered if the tests or analyses by the defense cannot be made because of the natural deterioration of the evidence.

(2) If the evidence necessary to conduct the tests or analyses by the defense is unavailable because of the neglect or intentional alteration by representatives of

the state prosecuting authority, other than alterations necessary to conduct the initial tests, the tests or analyses by the state prosecuting authority shall not be admitted into evidence.

Sec. 3. That section 29-1922, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1922. Any defendant may file a motion to produce any statement made by the defendant, or furnish the name of every eyewitness who has identified the defendant at a line-up or show-up. The motion shall be filed in the district court where a felony is charged the case is to be tried and may be made at any time after the information, or indictment, or complaint is filed, and must be filed at least ten days before trial or at the time of arraignment, whichever is the later, unless otherwise permitted by the court for good cause shown. Upon a showing that the items requested by the defendant may be material to the preparation of his or her defense and that the request is reasonable, the court shall entertain such motion and upon sufficient showing may at any time order that the discovery or the inspection be denied, restricted, or deferred or may specify the time, place, and manner of the making of the examination and the taking of copies of items requested and may prescribe such other terms and conditions as are just.

Sec. 4. That section 29-1923, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1923. If, subsequent to compliance with an order issued pursuant to section 29-1922, and prior to or during trial, the county attorney, prosecuting authority discovers any additional statement made by the defendant or the name of any eyewitness who has identified the defendant at a line-up or show-up 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. If at any time during the course of the proceedings it is brought to the attention of the court that the county attorney prosecuting authority has failed to comply with this section or with an order issued pursuant to section 29-1922, the court may order the county attorney prosecuting authority to permit the discovery or inspection of materials or witnesses not previously disclosed, grant a continuance, or prohibit the county attorney 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. 5. That section 29-1924, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1924. The term statement as used in sections 29-1922 and 29-1923 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 ~~county attorney~~ prosecuting authority and recorded contemporaneously with the making of such oral statement.

Sec. 6. That original sections 29-1912, 29-1913, and 29-1922 to 29-1924, Reissue Revised Statutes of Nebraska, 1943, are repealed.