

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 496**

FINAL READING

Introduced by Wayne, 13.

Read first time January 22, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-916.01, 28-919, 28-922, 29-1912, 29-1914, 29-1916, 29-1917,  
3 29-1918, 29-1919, 29-1923, and 29-1924, Reissue Revised Statutes of  
4 Nebraska; to change penalties for tampering with witnesses or  
5 informants, jury tampering, and tampering with physical evidence; to  
6 change provisions relating to discovery in criminal cases; to  
7 redefine terms; to harmonize provisions; and to repeal the original  
8 sections.

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

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

3 28-916.01 As used in this section and sections 28-915, 28-915.01,  
4 ~~and 28-919,~~ and 28-922, unless the context otherwise requires:

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

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

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

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

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

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

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

1 proceeding; and

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

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

8 28-919 (1) A person commits the offense of tampering with a witness  
9 or informant if, believing that an official proceeding or investigation  
10 of a criminal or civil matter is pending or about to be instituted, he or  
11 she attempts to induce or otherwise cause a witness or informant to:

12 (a) Testify or inform falsely;

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

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

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

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

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

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

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

30 (4) Jury tampering is a Class IV felony, except that if such offense  
31 involves a pending criminal proceeding which alleges a violation of

1 another offense classified as a Class II felony or a higher  
2 classification, the offense is a Class II felony.

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

5 28-922 (1) A person commits the offense of tampering with physical  
6 evidence if, believing that an official proceeding is pending or about to  
7 be instituted and acting without legal right or authority, he or she:

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

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

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

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

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

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

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

26 29-1912 (1) When a defendant is charged with a felony or when a  
27 defendant is charged with a misdemeanor or a violation of a city or  
28 village ordinance for which imprisonment is a possible penalty, he or she  
29 may request the court where the case is to be tried, at any time after  
30 the filing of the indictment, information, or complaint, to order the  
31 prosecuting attorney to permit the defendant to inspect and copy or

1 photograph:

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

6 (i) Written or recorded statements;

7 (ii) Written summaries of oral statements; and

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

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

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

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

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

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

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

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

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

1 witness;

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

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

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

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

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

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

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

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

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

30       (3) Whenever the court refuses to grant an order pursuant to the  
31 provisions of this section, it shall render its findings in writing

1 together with the facts upon which the findings are based.

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

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

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

18 29-1914 Whenever an order is issued pursuant to the provisions of  
19 section 29-1912 or 29-1913, it shall be limited to items or information  
20 that:

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

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

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

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

29 29-1916 (1) Whenever the court issues an order pursuant to the  
30 provisions of sections 29-1912 and 29-1913, the court may condition its  
31 order by requiring the defendant to grant the prosecution like access to

1 comparable items or information included within the defendant's request  
2 which:

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

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

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

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

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

12 29-1917 (1) Except as provided in section 29-1926, at any time after  
13 the filing of an indictment or information in a felony prosecution, the  
14 prosecuting attorney or the defendant may request the court to allow the  
15 taking of a deposition of any person other than the defendant who may be  
16 a witness in the trial of the offense. The court may order the taking of  
17 the deposition when it finds the testimony of the witness:

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

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

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

25 (3) The proceedings in taking the deposition of a witness pursuant  
26 to this section and returning it to the court shall be governed in all  
27 respects as the taking of depositions in civil cases, including section  
28 25-1223.

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

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

3           29-1918 If, subsequent to compliance with an order for discovery  
4 under the provisions of sections 29-1912 to 29-1921, and prior to or  
5 during trial, a party discovers additional material which the party he  
6 would have been under a duty to disclose or produce at the time of such  
7 previous compliance, the party he shall promptly notify the other party  
8 or the other party's his attorney and the court of the existence of the  
9 additional material. Such notice shall be given at the time of the  
10 discovery of such additional material.

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

13          29-1919 If, at any time during the course of the proceedings it is  
14 brought to the attention of the court that a party has failed to comply  
15 with ~~the provisions of~~ sections 29-1912 to 29-1921 or an order issued  
16 pursuant to ~~the provisions of~~ sections 29-1912 to 29-1921, the court may:

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

19           (2) Grant a continuance;

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

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

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

25          29-1923 If, subsequent to compliance with an order issued pursuant  
26 to section 29-1922, and prior to or during trial, the prosecuting  
27 authority discovers any additional statement made by the defendant or the  
28 name of any eyewitness who has identified the defendant at a lineup or  
29 showup previously requested or ordered which is subject to discovery or  
30 inspection under section 29-1922, he or she shall promptly notify the  
31 defendant or his or her attorney or the court of the existence of this

1 additional material. Such notice shall be given at the time of the  
2 discovery of such additional material. If at any time during the course  
3 of the proceedings it is brought to the attention of the court that the  
4 prosecuting authority has failed to comply with this section or with an  
5 order issued pursuant to section 29-1922, the court may order the  
6 prosecuting authority to permit the discovery or inspection of materials  
7 or witnesses not previously disclosed, grant a continuance, or prohibit  
8 the prosecuting authority from introducing in evidence the material or  
9 the testimony of the witness or witnesses not disclosed, or it may enter  
10 such other order as it deems just under the circumstances.

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

13 29-1924 For purposes of ~~The term statement as used in~~ sections  
14 29-1922 and 29-1923, statement made by the defendant includes any of the  
15 following statements made by the defendant which relate to the  
16 investigation of the underlying charge or charges in the case and which  
17 were developed or received by law enforcement agencies:

18 (1) Written or recorded statements;

19 (2) Written summaries of oral statements; and

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

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