

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 93

Introduced by Dungan, 26.

Read first time January 10, 2025

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1913, Reissue Revised Statutes of Nebraska, and sections 29-1912
- 3 and 29-1918, Revised Statutes Cumulative Supplement, 2024; to
- 4 provide for discovery of information contained in computers and
- 5 electronic communication devices and of matters relating to expert
- 6 witnesses; to change provisions relating to the continuing duty to
- 7 disclose; to define terms; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 29-1912, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 29-1912 (1) When a defendant is charged with a felony or when a
4 defendant is charged with a misdemeanor or a violation of a city or
5 village ordinance for which imprisonment is a possible penalty, he or she
6 may request the court where the case is to be tried, at any time after
7 the filing of the indictment, information, or complaint, to order the
8 prosecuting attorney to permit the defendant to inspect and copy or
9 photograph:

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

14 (i) Written or recorded statements;

15 (ii) Written summaries of oral statements; and

16 (iii) The substance of oral statements;

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

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

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

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

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

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

30 (h) The name of any expert witness who may be called by the
31 prosecuting authority, the witness's qualifications, and a complete

1 statement of any opinions the witness may offer, including the basis and
2 reasons for such opinions.

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

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

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

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

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

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

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

20 (4) Whenever the prosecuting attorney believes that the granting of
21 an order under the provisions of this section will result in the
22 possibility of bodily harm to witnesses or that witnesses will be
23 coerced, the court may permit him or her to make such a showing in the
24 form of a written statement to be inspected by the court alone. The
25 statement shall be sealed and preserved in the records of the court to be
26 made available to the appellate court in the event of an appeal by the
27 defendant.

28 (5) This section is subject to the continuing duty of disclosure
29 under section 29-1918.

30 (6) ~~(5)~~ This section does not apply to jailhouse informants as
31 defined in section 29-4701. Sections 29-4701 to 29-4706 govern jailhouse

1 informants.

2 **Sec. 2.** Section 29-1913, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 29-1913 (1) When in any felony prosecution or any prosecution for a
5 misdemeanor or a violation of a city or village ordinance for which
6 imprisonment is a possible penalty, the evidence of the prosecuting
7 authority consists of scientific tests or analyses of ballistics,
8 firearms identification, fingerprints, blood, semen, or other stains,
9 upon motion of the defendant the court where the case is to be tried may
10 order the prosecuting attorney to make available to the defense such
11 evidence necessary to allow the defense to conduct like tests or analyses
12 with its own experts.

13 (2) When in any felony prosecution or any prosecution for a
14 misdemeanor or a violation of a city or village ordinance for which
15 imprisonment is a possible penalty, the evidence of the prosecuting
16 authority consists of an electronic communication device, computer, or
17 digital information, or scientific tests or analyses of such device,
18 computer, or information, the court where the case is to be tried may
19 order the prosecuting attorney to make available to the defendant such
20 evidence necessary to present a defense or allow the defendant to conduct
21 like tests or analyses with the defendant's own experts.

22 (3) An The order under this section shall specify the time, place,
23 and manner of making such tests or analyses by the defense.

24 (4) An ~~Such an~~ order under this section shall not be entered if the
25 tests or analyses by the defense cannot be made because of the natural
26 deterioration of the evidence.

27 (5) (2) If the evidence necessary to conduct the tests or analyses
28 by the defense is unavailable because of the neglect or intentional
29 alteration by representatives of the prosecuting authority, other than
30 alterations necessary to conduct the initial tests, the tests or analyses
31 by the prosecuting authority shall not be admitted into evidence.

1 (6) For purposes of this section:

2 (a) Computer has the same meaning as in section 28-1343;

3 (b) Digital information means information contained on an electronic
4 communication device or a computer and includes, but is not limited to,
5 historical, archival, back-up, or legacy files, whether in any current or
6 historical media format; screenshots; text messages; social media
7 communications or interactions; or any other digital evidence; and

8 (c) Electronic communication device has the same meaning as in
9 section 28-833.

10 **Sec. 3.** Section 29-1918, Revised Statutes Cumulative Supplement,
11 2024, is amended to read:

12 29-1918 A party who discovers additional evidence or material before
13 or during trial must promptly disclose its existence to the other party
14 or the court if:

15 (1) The evidence or material is subject to discovery or inspection
16 under sections 29-1912 to 29-1921; and

17 (2) The other party previously requested, or the court ordered, the
18 production of such evidence or material. If, subsequent to compliance
19 with an order for discovery under the provisions of sections 29-1912 to
20 29-1921, and prior to or during trial, a party discovers additional
21 material which the party would have been under a duty to disclose or
22 produce at the time of such previous compliance, the party shall promptly
23 notify the other party or the other party's attorney and the court of the
24 existence of the additional material. Such notice shall be given at the
25 time of the discovery of such additional material.

26 **Sec. 4.** Original section 29-1913, Reissue Revised Statutes of
27 Nebraska, and sections 29-1912 and 29-1918, Revised Statutes Cumulative
28 Supplement, 2024, are repealed.