

Chapter 13
Procedure
(Last Updated: May 13, 2013)

Chapter 13.A Speedy Trial

Chapter 13.B Recorded Interrogations

Chapter 13.A

Procedure

Speedy Trial

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29-1207. Trial within six months; time; how computed

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- (1) Every person indicted or informed against for any offense shall be brought to trial within six months, and such time shall be computed as provided in this section.
- (2) Such six-month period shall commence to run from the date the indictment is returned or the information filed, unless the offense is a misdemeanor offense involving intimate partners, as that term is defined in section 28-323, in which case the six-month period shall commence from the date the defendant is arrested on a complaint filed as part of a warrant for arrest.
- (3) If a defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, such period shall commence to run from the date of the mistrial, order granting a new trial, or the mandate on remand.
- (4) The following periods shall be excluded in computing the time for trial:
 - (a) The period of delay resulting from other proceedings concerning the defendant, including, but not limited to, an examination and hearing on competency and the period during which he or she is incompetent to stand trial; the time from filing until final disposition of pretrial motions of the defendant, including motions to suppress evidence, motions to quash the indictment or information, demurrers and pleas in abatement, and motions for a change of venue; and the time consumed in the trial of other charges against the defendant;
 - (b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his or her counsel. A defendant without counsel shall not be deemed to have consented to a continuance unless he or she has been advised by the court of his or her right to a speedy trial and the effect of his or her consent. A defendant who has sought and obtained a continuance which is indefinite has an affirmative duty to end the continuance by giving notice of request for trial or the court can end the continuance by setting a trial date. When the court ends an indefinite continuance by setting a trial date, the excludable period resulting from the indefinite continuance ends on the date for which trial commences. A defendant is deemed to have waived his or her right to speedy trial when the period of delay resulting from a continuance granted at the request of the defendant or his or her counsel extends the trial date beyond the statutory six-month period;
 - (c) The period of delay resulting from a continuance granted at the request of the prosecuting attorney, if:
 - (i) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(ii) The continuance is granted to allow the prosecuting attorney additional time to prepare the state's case and additional time is justified because of the exceptional circumstances of the case;

(d) The period of delay resulting from the absence or unavailability of the defendant;

(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the defendant shall be granted a severance so that he or she may be tried within the time limits applicable to him or her; and

(f) Other periods of delay not specifically enumerated in this section, but only if the court finds that they are for good cause.

Chapter 13.B

Procedure Recorded Interrogations (Last Updated: May 13, 2013)

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29-4501. Legislative findings

The Legislature finds that to electronically record statements made during a custodial interrogation is an effective way to document a free, knowing, voluntary, and intelligent waiver of a person's right to remain silent, to agree to answer questions, to decide to have an attorney present during such questioning, and to decide to have an attorney provided to such person if he or she cannot afford an attorney, as provided by the Constitution of the United States and the Constitution of Nebraska. Providing a record of the statement made during a custodial interrogation and any waiver of constitutional rights will reduce speculation and claims that may arise as to the content of the statement. Such a record of the content of the statement will aid law enforcement officers in analyzing and rejecting untruthful statements and will aid the factfinder in determining whether a statement was freely, knowingly, voluntarily, and intelligently made.

29-4502. Terms, defined

For purposes of sections 29-4501 to 29-4508:

- (1) Custodial interrogation has the meaning prescribed to it under the Fourth and Fifth Amendments to the Constitution of the United States and Article I, sections 3 and 7, of the Constitution of Nebraska, as interpreted by the United States Supreme Court and the Nebraska Supreme Court;
- (2) Electronically record means to record using an audio recording device, a digital recording device, or a video recording device;
- (3) Place of detention means a police station, sheriff's office, troop headquarters, courthouse, county attorney's office, juvenile or adult correctional or holding facility, community correctional center, or building under the permanent control of law enforcement at which the person is in custody pursuant to the authority of a law enforcement officer; and
- (4) Reasonable exception means circumstances in which:
 - (a) A statement was made when it was not practicable to electronically record the statement;
 - (b) Equipment to electronically record the statement could not be reasonably obtained;
 - (c) The person in custody refused to have the statement electronically recorded;
 - (d) The equipment used to electronically record the statement malfunctioned; or

(e) The law enforcement officer conducting the statement reasonably believed that the crime for which the person was taken into custody was not a crime described in subsection (2) of section 29-4503.

29-4503. Electronic recordation of statements and waiver of rights required; when

(1) All statements relating to crimes described in subsection (2) of this section and statements regarding rights described in section 29-4501 or the waiver of such rights made during a custodial interrogation at a place of detention that are described in subsection (2) of this section shall be electronically recorded.

(2) Statements subject to subsection (1) of this section are those statements relating to:

(a) Crimes resulting in death or felonies involving (i) sexual assault, (ii) kidnapping, (iii) child abuse, or (iv) strangulation; or

(b) Offenses being investigated as part of the same course of conduct as the offenses described in subdivision (a) of this subsection.

29-4504. Law enforcement officer; failure to comply with electronic recordation requirement; jury instruction

Except as otherwise provided in sections 29-4505 to 29-4507, if a law enforcement officer fails to comply with section 29-4503, a court shall instruct the jury that they may draw an adverse inference for the law enforcement officer's failure to comply with such section.

29-4505. Defendant; testimony contrary to statement; use of statement authorized

(1) If a defendant testifies contrary to his or her statement made during a custodial interrogation at a place of detention which was not electronically recorded, such statement may be used for the purpose of impeachment if it is shown that the statement was freely, knowingly, voluntarily, and intelligently made.

(2) A jury instruction shall not be required if the prosecution proves, by a preponderance of the evidence, that there is a reasonable exception for there not being an electronic recording.

29-4506. Law enforcement officer; failure to comply with electronic recordation requirement; admissibility of evidence

If a law enforcement officer fails to comply with section 29-4503, such failure shall not bar the use of any evidence derived from such statement if the court determines that the evidence is otherwise admissible.

29-4507. Statement obtained out-of-state or by federal law enforcement officer; admissible; when

Any statement made during a custodial interrogation shall be admissible against such person in a criminal proceeding in this state if:

- (1) The statement was obtained in another state and was obtained in compliance with the laws of that state; or
- (2) The statement was obtained by a federal law enforcement officer in this state or another state, was obtained in compliance with the laws of the United States, and was not taken by a federal law enforcement officer in an attempt to circumvent sections 29-4501 to 29-4508.

29-4508. Inaudible portions; how treated

The existence of inaudible portions of an electronic recording, which are not the result of bad faith by a law enforcement officer to produce an inaudible result, standing alone, shall not render a statement out of compliance with section 29-4503.