

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 167

Introduced by Slama, 1.

Read first time January 09, 2023

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1917, Revised Statutes Cumulative Supplement, 2022; to provide
- 3 requirements for depositions of certain children; to harmonize
- 4 provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1917, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 29-1917 (1) Except as provided in section 29-1926 and subsection (5)
4 of this section, at any time after the filing of an indictment or
5 information in a felony prosecution, the prosecuting attorney or the
6 defendant may request the court to allow the taking of a deposition of
7 any person other than the defendant who may be a witness in the trial of
8 the offense. The court may order the taking of the deposition when it
9 finds the testimony of the witness:

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

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

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

17 (3) Except as provided in subsections ~~subsection~~ (4) and (5) of this
18 section, the proceedings in taking the deposition of a witness pursuant
19 to this section and returning it to the court shall be governed in all
20 respects as the taking of depositions in civil cases, including section
21 25-1223.

22 (4)(a) A sexual assault victim may request to have an advocate of
23 the victim's choosing present during a deposition under this section. The
24 prosecuting attorney shall inform the victim that the victim may make
25 such request as soon as reasonably practicable prior to the deposition.
26 If the victim wishes to have an advocate present, the victim shall, if
27 reasonably practicable, inform the prosecuting attorney if an advocate
28 will be present, and, if known, the advocate's identity and contact
29 information. If so informed by the victim, the prosecuting attorney shall
30 notify the defendant as soon as reasonably practicable.

31 (b) An advocate present at a deposition under this section shall not

1 interfere with the deposition or provide legal advice.

2 (c) For purposes of this subsection, the terms sexual assault
3 victim, victim, and advocate have the same meanings as in section
4 29-4309.

5 (5)(a) Except as provided in subdivision (5)(b) of this section, a
6 court shall not approve a request to depose a child eighteen years of age
7 or younger at the time of the request when such child has, pursuant to
8 section 28-728, undergone a video-recorded forensic interview at a child
9 advocacy center accredited to conduct such interviews.

10 (b) A court may order the taking of a deposition of a child
11 described in subdivision (5)(a) of this section if:

12 (i) The parties agree; or

13 (ii) The court finds that the deposition will aid in the disclosure
14 of evidence that is not reasonably available by other means and is
15 essential for the defendant to prepare for trial. In making such
16 determination, the court shall consider the availability of the recorded
17 statements of the child.

18 (c) When ordering a deposition of a child described in subdivision
19 (5)(a) of this section, the court may, on its own motion or by request of
20 a party, make any protective order that justice requires to protect the
21 child from emotional harm or distress, harassment, undue influence, or
22 intimidation. Such protective order may provide:

23 (i) That the deposition shall be taken only on specified terms and
24 conditions, including a designation of the time; place, such as at a
25 child advocacy center; and manner of taking the deposition;

26 (ii) That the scope of the deposition shall be limited to certain
27 matters as designated by the court;

28 (iii) That a victim advocate, guardian ad litem, or other support
29 person who is not a witness to the proceedings shall be present;

30 (iv) That the defendant shall be physically excluded from the
31 deposition but may attend via electronic means as determined by the

1 court; or

2 (v) For any other provision the court determines is justified and
3 appropriate.

4 (d) When issuing a protective order under this subsection, the court
5 shall consider the age, health, level of intellectual functioning,
6 developmental level, and emotional condition of the child; whether the
7 child has knowledge material to the proof of or defense to any essential
8 element of the crime or any affirmative defense; and whether the
9 defendant has received a full written, taped, or transcribed account of
10 the child's proposed testimony for trial.

11 (6) (5) A deposition taken pursuant to this section may be used at
12 the trial by any party solely for the purpose of contradicting or
13 impeaching the testimony of the deponent as a witness.

14 Sec. 2. Original section 29-1917, Revised Statutes Cumulative
15 Supplement, 2022, is repealed.