

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 459

Introduced by Crawford, 45.

Read first time January 20, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1917, Revised Statutes Cumulative Supplement, 2014; to provide
- 3 for depositions of a child victim or child witness; 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 2014, 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) The proceedings in taking the deposition of a witness pursuant
18 to this section and returning it to the court shall be governed in all
19 respects as the taking of depositions in civil cases.

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

23 (5)(a) No request for a deposition shall be granted for a child
24 under the age of sixteen at the time of the request who has been
25 interviewed at a child advocacy center or police department and the
26 interview was video recorded, except by agreement of the parties or by
27 approval of the court. The court shall not approve a deposition under
28 this subdivision unless the court finds that the testimony of the child
29 is essential to assist the defendant in preparing for trial, that the
30 evidence sought is not reasonably available by any other means, and that
31 the probative value of the testimony outweighs the potential detriment to

1 the child being deposed. In determining whether to approve the taking of
2 a deposition, the court shall consider the availability of the recorded
3 statements of the child and the complexity of the issues involved.

4 (b) Upon granting a request to depose a child under subdivision (a)
5 of this subsection, the court shall make any protective order that
6 justice requires to protect the child from emotional harm or distress,
7 harassment, undue influence, or intimidation. Such order may include: (i)
8 That the deposition may be taken only on specified terms and conditions,
9 including a designation of the time, place, and manner of taking the
10 deposition; (ii) that the scope of the deposition may be limited to
11 certain matters as designated by the court; (iii) that a victim advocate
12 or other support person not a witness to the proceedings may be present;
13 (iv) that the defendant may be excluded from the deposition; or (v) any
14 other provision the court determines is justified and appropriate. In
15 ruling on a request for a protective order, the court may consider the
16 age, health, level of intellectual functioning, and emotional condition
17 of the child; whether the child has knowledge material to the proof of or
18 defense to any essential element of the crime; whether the child has
19 provided a full written, taped, or transcribed account of his or her
20 proposed testimony for trial; or whether the child's testimony will
21 relate only to a peripheral issue in the case.

22 Sec. 2. Original section 29-1917, Revised Statutes Cumulative
23 Supplement, 2014, is repealed.