

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 589

Introduced by Crawford, 45.

Read first time January 18, 2017

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1917, Reissue Revised Statutes of Nebraska; to provide for
- 3 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, Reissue Revised Statutes of Nebraska, is
2 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 eighteen years of age or younger at the time of the request when such
25 child has, pursuant to section 28-728, undergone a video-recorded
26 forensic interview at a child advocacy center accredited to conduct such
27 interviews, except by agreement of the parties or by approval of the
28 court. The court shall not approve a deposition under this subdivision
29 unless the court finds that the deposition will aid in the disclosure of
30 evidence that is not reasonably available by other means and is essential
31 in preparing the defendant for trial. In determining whether to approve

1 the taking of a deposition, the court shall consider the availability of
2 the recorded statements of the child.

3 (b) Upon granting a request to depose a child under the age of
4 eighteen years, the court, on its own motion or by motion of a party,
5 shall make any protective order that justice requires to protect the
6 child from emotional harm or distress, harassment, undue influence, or
7 intimidation. Such protective order may provide: (i) That the deposition
8 may be taken only on specified terms and conditions, including a
9 designation of the time, place, such as at a child advocacy center, and
10 manner of taking the deposition; (ii) that the scope of the deposition
11 may be limited to certain matters as designated by the court; (iii) that
12 a victim advocate, guardian ad litem, or other support person not a
13 witness to the proceedings shall be present; (iv) that the defendant
14 shall be physically excluded from the deposition but may attend via
15 electronic means as determined by the court; or (v) for any other
16 provision the court determines is justified and appropriate. When issuing
17 a protective order, the court shall consider the age, health, level of
18 intellectual functioning, developmental level, and emotional condition of
19 the child; whether the child has knowledge material to the proof of or
20 defense to any essential element of the crime; and whether the child has
21 provided a full written, taped, or transcribed account of his or her
22 proposed testimony for trial.

23 Sec. 2. Original section 29-1917, Reissue Revised Statutes of
24 Nebraska, is repealed.