

## LEGISLATIVE BILL 90

Approved by the Governor April 7, 1988

Introduced by Scofield, 49; Withem, 14; Conway, 17;  
McFarland, 28; Smith, 33; Rupp, 22;  
Hartnett, 45; Harris, 27; Baack, 47;  
Pappas, 42; Barrett, 39; Higgins, 9;  
Morehead, 30; Pirsch, 10; Abboud, 12

AN ACT relating to criminal procedure; to amend section 29-1917, Reissue Revised Statutes of Nebraska, 1943; to state intent; to authorize the taking of videotape depositions and in camera testimony of certain children as prescribed; to define a term; to authorize rules of procedure; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature recognizes that obtaining testimony in a criminal prosecution from a child victim of or a child witness to a felony offense may be a delicate matter and may require some special considerations. It is the intent of the Legislature to promote, facilitate, and preserve the testimony of such child victim or child witness in a criminal prosecution to the fullest extent possible consistent with the constitutional right to confrontation guaranteed by the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution.

Sec. 2. That section 29-1917, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

(2) An order granting the taking of a

deposition shall include the time and place for taking such deposition and such other conditions as the court determines to be just.

(3) The proceedings in taking the deposition of a witness pursuant to the provisions of this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases.

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

Sec. 3. (1) Upon request of the prosecuting or defense attorney and upon a showing of compelling need, the court shall order the taking of a videotape deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child. If the court orders a videotape deposition, the court shall:

(a) Designate the time and place for taking the deposition. The deposition may be conducted in the courtroom, the judge's chambers, or any other location suitable for videotaping;

(b) Assure adequate time for the defense attorney to complete discovery before taking the deposition; and

(c) Preside over the taking of the videotape deposition in the same manner as if the child were called as a witness for the prosecution during the course of the trial.

(2) Unless otherwise required by the court, the deposition shall be conducted in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony.

(3) At any time subsequent to the taking of the original videotape deposition and upon sufficient cause shown, the court shall order the taking of additional videotape depositions to be admitted at the time of the trial.

(4) If the child testifies at trial in person rather than by videotape deposition, the taking of the child's testimony may, upon request of the prosecuting attorney and upon a showing of compelling need, be

conducted in camera.

(5) Unless otherwise required by the court, the child shall testify in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony. Unless waived by the defendant, all persons in the room shall be visible on camera except the camera operator.

(6) If deemed necessary to preserve the constitutionality of the child's testimony, the court may direct that during the testimony the child shall at all times be in a position to see the defendant live or on camera.

(7) For purposes of this section, child shall mean a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.

(8) Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial videotape deposition, in camera live testimony, in camera videotape testimony, or any other accommodation, the court shall make particularized findings on the record of:

(a) The nature of the offense;

(b) The significance of the child's testimony to the case;

(c) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;

(d) The child's age;

(e) The child's psychological maturity and understanding; and

(f) The nature, degree, and duration of potential injury to the child from testifying.

(9) The court may order an independent examination by a psychologist or psychiatrist if the defense attorney requests the opportunity to rebut the showing of compelling need produced by the prosecuting attorney. Such examination shall be conducted in the child's county of residence.

(10) After a finding of compelling need by the court, neither party may call the child witness to testify as a live witness at the trial before the jury unless that party demonstrates that the compelling need no longer exists.

(11) Nothing in this section shall limit the right of access of the media or the public to open court.

(12) Nothing in this section shall preclude discovery by the defendant as set forth in section 29-1912.

(13) The Supreme Court may adopt and promulgate rules of procedure to administer this section, which rules shall not be in conflict with laws governing such matters.

Sec. 4. That original section 29-1917, Reissue Revised Statutes of Nebraska, 1943, is repealed.