

AMENDMENTS TO LB347

Introduced by Judiciary.

1           1. Insert the following new sections:

2           Section 1. Section 29-1926, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4           29-1926 (1)(a) Upon request of the prosecuting or defense attorney  
5 and upon a showing of compelling need, the court shall order the taking  
6 of a videotape deposition of a child victim of or child witness to any  
7 offense punishable as a felony. The deposition ordinarily shall be in  
8 lieu of courtroom or in camera testimony by the child. If the court  
9 orders a videotape deposition, the court shall:

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

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

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

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

26           (c) At any time subsequent to the taking of the original videotape  
27 deposition and upon sufficient cause shown, the court shall order the

1 taking of additional videotape depositions to be admitted at the time of  
2 the trial.

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

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

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

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

24 (h) Nothing in this section shall restrict the court from conducting  
25 the pretrial deposition or in camera proceedings in any manner deemed  
26 likely to facilitate and preserve a child's testimony to the fullest  
27 extent possible, consistent with the right to confrontation guaranteed in  
28 the Sixth Amendment of the Constitution of the United States and Article  
29 I, section 11, of the Nebraska Constitution. In deciding whether there is  
30 a compelling need that child testimony accommodation is required by  
31 pretrial videotape deposition, in camera live testimony, in camera

1 videotape testimony, or any other accommodation, the court shall make  
2 particularized findings on the record of:

3 (i) The nature of the offense;

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

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

9 (iv) The child's age;

10 (v) The child's psychological maturity and understanding; and

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

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

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

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

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

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

28 (2)(a) No custodian of a videotape of a child victim or child  
29 witness alleging, explaining, denying, or describing an act of sexual  
30 assault pursuant to section 28-319, 28-319.01, or 28-320.01 or child  
31 abuse pursuant to section 28-707 as part of an investigation or

1 evaluation of the abuse or assault shall release or use a videotape or  
2 copies of a videotape or consent, by commission or omission, to the  
3 release or use of a videotape or copies of a videotape to or by any other  
4 party without a court order, notwithstanding the fact that the child  
5 victim or child witness has consented to the release or use of the  
6 videotape or that the release or use is authorized under law, except as  
7 provided in section 28-730 or pursuant to an investigation under the  
8 Office of Inspector General of Nebraska Child Welfare Act. Any custodian  
9 may release or consent to the release or use of a videotape or copies of  
10 a videotape to law enforcement agencies or agencies authorized to  
11 prosecute such abuse or assault cases on behalf of the state.

12 (b) The court order may govern the purposes for which the videotape  
13 may be used, the reproduction of the videotape, the release of the  
14 videotape to other persons, the retention and return of copies of the  
15 videotape, and any other requirements reasonably necessary for the  
16 protection of the privacy and best interests of the child victim or child  
17 witness.

18 (c) Pursuant to section 29-1912, the defendant described in the  
19 videotape may petition the district court in the county where the alleged  
20 offense took place or where the custodian of the videotape resides for an  
21 order releasing to the defendant a copy of the videotape.

22 (d) Any person who releases or uses a videotape except as provided  
23 in this section shall be guilty of a Class I misdemeanor.

24 Sec. 2. Section 43-2,108, Revised Statutes Cumulative Supplement,  
25 2014, is amended to read:

26 43-2,108 (1) The juvenile court judge shall keep a minute book in  
27 which he or she shall enter minutes of all proceedings of the court in  
28 each case, including appearances, findings, orders, decrees, and  
29 judgments, and any evidence which he or she feels it is necessary and  
30 proper to record. Juvenile court legal records shall be deposited in  
31 files and shall include the petition, summons, notice, certificates or

1 receipts of mailing, minutes of the court, findings, orders, decrees,  
2 judgments, and motions.

3 (2) Except as provided in subsections (3), ~~and (4), and (5)~~ of this  
4 section, the medical, psychological, psychiatric, and social welfare  
5 reports and the records of juvenile probation officers as they relate to  
6 individual proceedings in the juvenile court shall not be open to  
7 inspection, without order of the court. Such records shall be made  
8 available to a district court of this state or the District Court of the  
9 United States on the order of a judge thereof for the confidential use of  
10 such judge or his or her probation officer as to matters pending before  
11 such court but shall not be made available to parties or their counsel;  
12 and such district court records shall be made available to a county court  
13 or separate juvenile court upon request of the county judge or separate  
14 juvenile judge for the confidential use of such judge and his or her  
15 probation officer as to matters pending before such court, but shall not  
16 be made available by such judge to the parties or their counsel.

17 (3) As used in this section ~~subsection~~, confidential record  
18 information means ~~shall mean~~ all docket records, other than the  
19 pleadings, orders, decrees, and judgments; case files and records;  
20 reports and records of probation officers; and information supplied to  
21 the court of jurisdiction in such cases by any individual or any public  
22 or private institution, agency, facility, or clinic, which is compiled  
23 by, produced by, and in the possession of any court. In all cases under  
24 subdivision (3)(a) of section 43-247, access to all confidential record  
25 information in such cases shall be granted only as follows: (a) The court  
26 of jurisdiction may, subject to applicable federal and state regulations,  
27 disseminate such confidential record information to any individual, or  
28 public or private agency, institution, facility, or clinic which is  
29 providing services directly to the juvenile and such juvenile's parents  
30 or guardian and his or her immediate family who are the subject of such  
31 record information; (b) the court of jurisdiction may disseminate such

1 confidential record information, with the consent of persons who are  
2 subjects of such information, or by order of such court after showing of  
3 good cause, to any law enforcement agency upon such agency's specific  
4 request for such agency's exclusive use in the investigation of any  
5 protective service case or investigation of allegations under subdivision  
6 (3)(a) of section 43-247, regarding the juvenile or such juvenile's  
7 immediate family, who are the subject of such investigation; and (c) the  
8 court of jurisdiction may disseminate such confidential record  
9 information to any court, which has jurisdiction of the juvenile who is  
10 the subject of such information upon such court's request.

11 (4) The court shall provide copies of predispositional reports and  
12 evaluations of the juvenile to the juvenile's attorney and the county  
13 attorney or city attorney prior to any hearing in which the report or  
14 evaluation will be relied upon.

15 (5) In all cases under sections 43-246.01 and 43-247 the court or  
16 the probation officer shall disseminate confidential record information  
17 to (a) the office of Inspector General of Nebraska Child Welfare upon  
18 request for the exclusive use in an investigation pursuant to the Office  
19 of Inspector General of Nebraska Child Welfare Act and (b) the Foster  
20 Care Review Office pursuant to the Foster Care Review Act. Nothing in  
21 this subsection shall prevent the notification of death or serious injury  
22 of a juvenile to the Inspector General of Nebraska Child Welfare pursuant  
23 to section 43-4318 as soon as reasonably possible after the Office of  
24 Probation Administration learns of such death or serious injury.

25 (~~6~~ 5) Nothing in ~~subsections~~ ~~subsection~~ (3) and (5) of this section  
26 shall be construed to restrict the dissemination of confidential record  
27 information between any individual or public or private agency,  
28 institute, facility, or clinic, except any such confidential record  
29 information disseminated by the court of jurisdiction pursuant to this  
30 section shall be for the exclusive and private use of those to whom it  
31 was released and shall not be disseminated further without order of such

1 court.

2 ~~(7)(a)~~ (6)(a) Any records concerning a juvenile court petition filed  
3 pursuant to subdivision (3)(c) of section 43-247 shall remain  
4 confidential except as may be provided otherwise by law. Such records  
5 shall be accessible to (i) the juvenile except as provided in subdivision  
6 (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's  
7 parent or guardian, and (iv) persons authorized by an order of a judge or  
8 court.

9 (b) Upon application by the county attorney or by the director of  
10 the facility where the juvenile is placed and upon a showing of good  
11 cause therefor, a judge of the juvenile court having jurisdiction over  
12 the juvenile or of the county where the facility is located may order  
13 that the records shall not be made available to the juvenile if, in the  
14 judgment of the court, the availability of such records to the juvenile  
15 will adversely affect the juvenile's mental state and the treatment  
16 thereof.

17 Sec. 3. Section 43-3001, Revised Statutes Cumulative Supplement,  
18 2014, is amended to read:

19 43-3001 (1) Notwithstanding any other provision of law regarding the  
20 confidentiality of records and when not prohibited by the federal Privacy  
21 Act of 1974, as amended, juvenile court records and any other pertinent  
22 information that may be in the possession of school districts, school  
23 personnel, county attorneys, the Attorney General, law enforcement  
24 agencies, child advocacy centers, state probation personnel, state parole  
25 personnel, youth detention facilities, medical personnel, treatment or  
26 placement programs, the Department of Health and Human Services, the  
27 Department of Correctional Services, the Foster Care Review Office, local  
28 foster care review boards, child abuse and neglect investigation teams,  
29 child abuse and neglect treatment teams, or other multidisciplinary teams  
30 for abuse, neglect, or delinquency concerning a child who is in the  
31 custody of the state may be shared with individuals and agencies who have

1 been identified in a court order authorized by this section.

2 (2) In any judicial proceeding concerning a child who is currently,  
3 or who may become at the conclusion of the proceeding, a ward of the  
4 court or state or under the supervision of the court, an order may be  
5 issued which identifies individuals and agencies who shall be allowed to  
6 receive otherwise confidential information concerning the child for  
7 legitimate and official purposes. The individuals and agencies who may be  
8 identified in the court order are the child's attorney or guardian ad  
9 litem, the parents' attorney, foster parents, appropriate school  
10 personnel, county attorneys, the Attorney General, authorized court  
11 personnel, law enforcement agencies, state probation personnel, state  
12 parole personnel, youth detention facilities, medical personnel, court  
13 appointed special advocate volunteers, treatment or placement programs,  
14 the Department of Health and Human Services, the Office of Juvenile  
15 Services, the Department of Correctional Services, the Foster Care Review  
16 Office, local foster care review boards, the office of Inspector General  
17 of Nebraska Child Welfare, child abuse and neglect investigation teams,  
18 child abuse and neglect treatment teams, other multidisciplinary teams  
19 for abuse, neglect, or delinquency, and other individuals and agencies  
20 for which the court specifically finds, in writing, that it would be in  
21 the best interest of the juvenile to receive such information. Unless the  
22 order otherwise states, the order shall be effective until the child  
23 leaves the custody of the state or supervision of the court or until a  
24 new order is issued.

25 (3) All information acquired by an individual or agency pursuant to  
26 this section shall be confidential and shall not be disclosed except to  
27 other persons who have a legitimate and official interest in the  
28 information and are identified in the court order issued pursuant to this  
29 section with respect to the child in question. A person who receives such  
30 information or who cooperates in good faith with other individuals and  
31 agencies identified in the appropriate court order by providing



1 information or records about a child shall be immune from any civil or  
2 criminal liability. The provisions of this section granting immunity from  
3 liability shall not be extended to any person alleged to have committed  
4 an act of child abuse or neglect.

5 (4) In any proceeding under this section relating to a child of  
6 school age, certified copies of school records relating to attendance and  
7 academic progress of such child are admissible in evidence.

8 (5) Except as provided in subsection (4) of this section, any person  
9 who publicly discloses information received pursuant to this section  
10 shall be guilty of a Class III misdemeanor.

11 2. Renumber the remaining sections and correct internal references  
12 and the repealer accordingly.