

AMENDMENTS TO LB589

Introduced by Crawford, 45.

1 1. Strike original section 1 and insert the following new section:

2 Section 1. Section 29-1917, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 29-1917 (1) Except as provided in section 29-1926 and subsection (5)
5 of this section, at any time after the filing of an indictment or
6 information in a felony prosecution or a petition in a juvenile
7 proceeding under subdivision (2) or (3)(a) of section 43-247, the
8 prosecuting attorney or the defendant may request the court to allow the
9 taking of a deposition of any person other than the defendant who may be
10 a witness in the trial of the offense. The court may order the taking of
11 the deposition when it finds the testimony of the witness:

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

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

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

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

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

25 (5)(a) When a child eighteen years of age or younger at the time of
26 the motion has, pursuant to section 28-728, undergone a video-recorded
27 forensic interview at a child advocacy center accredited to conduct such

1 interviews, the court may grant a deposition of such child upon a motion
2 by the defendant. In determining whether to approve the taking of a
3 deposition, the court shall consider the availability of the recorded
4 statements of the child.

5 (b) Upon granting a motion to depose a child under the age of
6 eighteen years, the court, on its own motion or by motion of a party,
7 shall issue any protective order that justice requires to protect the
8 child from emotional harm or distress, harassment, undue influence, or
9 intimidation. Such protective order may provide: (i) That the deposition
10 may be taken only on specified terms and conditions, including a
11 designation of the time, place, such as at a child advocacy center, and
12 manner of taking the deposition; (ii) that the scope of the deposition
13 may be limited to certain matters as designated by the court; (iii) that
14 a victim advocate, guardian ad litem, or other support person not a
15 witness to the proceedings shall be present; (iv) that the defendant
16 shall be physically excluded from the deposition but may attend via
17 electronic means as determined by the court; or (v) for any other
18 provision the court determines is justified and appropriate.

19 (c) When issuing a protective order, the court shall consider the
20 age, health, level of intellectual functioning, developmental level, and
21 emotional condition of the child; whether the child has knowledge
22 material to the proof of or defense to any essential element of the
23 crime; whether the child has, pursuant to section 28-728, undergone a
24 video-recorded forensic interview at a child advocacy center accredited
25 to conduct such interviews; and whether the child has provided a full
26 written, taped, or transcribed account of his or her proposed testimony
27 for trial.