

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 167**

Introduced by Slama, 1.

Read first time January 09, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1917, Revised Statutes Cumulative Supplement, 2022; to provide
- 3 requirements for depositions of certain children; 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 2022, 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) Except as provided in subsections ~~subsection~~ (4) and (5) of this  
18 section, the proceedings in taking the deposition of a witness pursuant  
19 to this section and returning it to the court shall be governed in all  
20 respects as the taking of depositions in civil cases, including section  
21 25-1223.

22 (4)(a) A sexual assault victim may request to have an advocate of  
23 the victim's choosing present during a deposition under this section. The  
24 prosecuting attorney shall inform the victim that the victim may make  
25 such request as soon as reasonably practicable prior to the deposition.  
26 If the victim wishes to have an advocate present, the victim shall, if  
27 reasonably practicable, inform the prosecuting attorney if an advocate  
28 will be present, and, if known, the advocate's identity and contact  
29 information. If so informed by the victim, the prosecuting attorney shall  
30 notify the defendant as soon as reasonably practicable.

31 (b) An advocate present at a deposition under this section shall not

1 interfere with the deposition or provide legal advice.

2 (c) For purposes of this subsection, the terms sexual assault  
3 victim, victim, and advocate have the same meanings as in section  
4 29-4309.

5 (5)(a) Except as provided in subdivision (5)(b) of this section, a  
6 court shall not approve a request to depose a child eighteen years of age  
7 or younger at the time of the request when such child has, pursuant to  
8 section 28-728, undergone a video-recorded forensic interview at a child  
9 advocacy center accredited to conduct such interviews.

10 (b) A court may order the taking of a deposition of a child  
11 described in subdivision (5)(a) of this section if:

12 (i) The parties agree; or

13 (ii) The court finds that the deposition will aid in the disclosure  
14 of evidence that is not reasonably available by other means and is  
15 essential for the defendant to prepare for trial. In making such  
16 determination, the court shall consider the availability of the recorded  
17 statements of the child.

18 (c) When ordering a deposition of a child described in subdivision  
19 (5)(a) of this section, the court may, on its own motion or by request of  
20 a party, make any protective order that justice requires to protect the  
21 child from emotional harm or distress, harassment, undue influence, or  
22 intimidation. Such protective order may provide:

23 (i) That the deposition shall be taken only on specified terms and  
24 conditions, including a designation of the time; place, such as at a  
25 child advocacy center; and manner of taking the deposition;

26 (ii) That the scope of the deposition shall be limited to certain  
27 matters as designated by the court;

28 (iii) That a victim advocate, guardian ad litem, or other support  
29 person who is not a witness to the proceedings shall be present;

30 (iv) That the defendant shall be physically excluded from the  
31 deposition but may attend via electronic means as determined by the

1 court; or

2 (v) For any other provision the court determines is justified and  
3 appropriate.

4 (d) When issuing a protective order under this subsection, the court  
5 shall consider the age, health, level of intellectual functioning,  
6 developmental level, and emotional condition of the child; whether the  
7 child has knowledge material to the proof of or defense to any essential  
8 element of the crime or any affirmative defense; and whether the  
9 defendant has received a full written, taped, or transcribed account of  
10 the child's proposed testimony for trial.

11 (6) (5) A deposition taken pursuant to this section may be used at  
12 the trial by any party solely for the purpose of contradicting or  
13 impeaching the testimony of the deponent as a witness.

14 Sec. 2. Original section 29-1917, Revised Statutes Cumulative  
15 Supplement, 2022, is repealed.