

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 969

Introduced by Wayne, 13.

Read first time January 13, 2020

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1926, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to video depositions of child victims and child witnesses;
- 4 and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

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

3 29-1926 (1)(a) Upon request of the prosecuting or defense attorney
4 and upon a showing of compelling need, the court shall order the taking
5 of a video ~~videotape~~ deposition of a child victim of or child witness to
6 any offense punishable as a felony. The deposition ordinarily shall be in
7 lieu of courtroom or in camera testimony by the child. If the court
8 orders a video ~~videotape~~ deposition, the court shall:

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

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

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

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

25 (c) At any time subsequent to the taking of the original video
26 ~~videotape~~ deposition and upon sufficient cause shown, the court shall
27 order the taking of additional video ~~videotape~~ depositions to be admitted
28 at the time of the trial.

29 (d) If the child testifies at trial in person rather than by video
30 ~~videotape~~ deposition, the taking of the child's testimony may, upon
31 request of the prosecuting attorney and upon a showing of compelling

1 need, be conducted in camera.

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

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

16 (g) For purposes of this section, child means a person eleven years
17 of age or younger at the time the motion to take the deposition is made
18 or at the time of the taking of in camera testimony at trial.

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

29 (i) The nature of the offense;

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

31 (iii) The likelihood of obtaining the child's testimony without

1 modification of trial procedure or with a different modification
2 involving less substantial digression from trial procedure than the
3 modification under consideration;

4 (iv) The child's age;

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

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

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

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

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

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

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

23 (2)(a) No custodian of a video recording ~~videotape~~ of a child victim
24 or child witness alleging, explaining, denying, or describing an act of
25 sexual assault pursuant to section 28-319, 28-319.01, or 28-320.01 or
26 child abuse pursuant to section 28-707 as part of an investigation or
27 evaluation of the abuse or assault shall release or use a video recording
28 ~~videotape~~ or copies of a video recording ~~videotape~~ or consent, by
29 commission or omission, to the release or use of a video recording
30 ~~videotape~~ or copies of a video recording ~~videotape~~ to or by any other
31 party without a court order, notwithstanding the fact that the child

1 victim or child witness has consented to the release or use of the video
2 recording videotape or that the release or use is authorized under law,
3 except as provided in section 28-730 or pursuant to an investigation
4 under the Office of Inspector General of Nebraska Child Welfare Act. Any
5 custodian may release or consent to the release or use of a video
6 recording videotape or copies of a video recording videotape to law
7 enforcement agencies or agencies authorized to prosecute such abuse or
8 assault cases on behalf of the state.

9 (b) Except as provided in subdivision (2)(c)(ii) of this section,
10 the ~~The~~ court order may govern the purposes for which the video recording
11 videotape may be used, the reproduction of the video recording videotape,
12 the release of the video recording videotape to other persons, the
13 retention and return of copies of the video recording videotape, and any
14 other requirements reasonably necessary for the protection of the privacy
15 and best interests of the child victim or child witness.

16 (c)(i) ~~(e)~~ Pursuant to section 29-1912, the defendant described in
17 the video recording videotape may petition the district court in the
18 county where the alleged offense took place or where the custodian of the
19 video recording videotape resides for an order releasing ~~to the defendant~~
20 a copy of the video recording to the defendant, the defendant's attorney,
21 or an agent of the defendant's attorney videotape.

22 (ii) Upon obtaining the video recording or a copy of the video
23 recording pursuant to subdivision (2)(c)(i) of this section, the
24 defendant, the defendant's attorney, or an agent of the defendant's
25 attorney may transcribe or replicate the video recording or a copy of the
26 video recording for purposes of review or inspection by the defendant, an
27 expert or consultant acting on behalf of the defendant or defendant's
28 attorney, or for any other purpose necessary for defense of defendant.

29 (d) Any person who releases or uses a video recording videotape
30 except as provided in this section shall be guilty of a Class I
31 misdemeanor.

1 Sec. 2. Original section 29-1926, Reissue Revised Statutes of
2 Nebraska, is repealed.