

**ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015**  
**COMMITTEE STATEMENT (CORRECTED)**  
**LB459**

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**Hearing Date:** Wednesday March 04, 2015  
**Committee On:** Judiciary  
**Introducer:** Crawford  
**One Liner:** Change provisions relating to a deposition of a child victim or child witness

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 7 Senators Coash, Ebke, Krist, Morfeld, Pansing Brooks, Seiler, Williams  
**Nay:**  
**Absent:**  
**Present Not Voting:** 1 Senator Chambers

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**Verbal Testimony:**

**Proponents:**  
SEN. SUE CRAWFORD  
LEE POLIKOV  
JEAN BRAZDA  
STEVE LAZORITZ  
LYNN AYERS  
SASHA REICHENBERG  
TOM BRANTLEY  
AMANDA GUROCK

**Representing:**  
INTRODUCER  
NE COUNTY ATTORNEY ASSOCIATION  
SARPY COUNTY VICTIM WITNESS  
MEDICAL EXPERT  
NE ALLIANCE OF CHILD ADVOCACY  
SELF  
SARPY COUNTY ATTORNEY  
RELIABLE ROCK COUNSELING CONSULTING P.C.

**Opponents:**  
TOM STRIGENZ

**Representing:**  
NE CRIMINAL DEFENSE ATTORNEY ASSOCIATION

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB459 would amend 29-1917 to change provisions relating to a deposition of a child victim or child witness.

In general, 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 who may be a witness in the trial of the offense, other than the defendant.

As amended, 29-1917 would provide that no request for a deposition shall be granted for a child under the age of 16 who has been interviewed at a child advocacy center or police department if the interview was video recorded, except by agreement of the parties or by approval of the court.

The court shall not approve a deposition unless:

- the court finds that the testimony of the child is essential to assist the defendant in preparing for trial,
  - that the evidence sought is not reasonably available by any other means, and
  - that the probative value of the testimony outweighs the potential detriment to the child being deposed.
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In determining whether to approve the taking of a deposition, the court shall consider the availability of the recorded statements of the child and the complexity of the issues involved.

Upon granting a request to depose a child, the court shall make any protective order that justice requires to protect the child from emotional harm or distress, harassment, undue influence, or intimidation.

Such order may include:

- (i) That the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition;
- (ii) that the scope of the deposition may be limited to certain matters as designated by the court;
- (iii) that a victim advocate or other support person not a witness to the proceedings may be present;
- (iv) that the defendant may be excluded from the deposition; or
- (v) any other provision the court determines is justified and appropriate.

In ruling on a request for a protective order, the court may consider:

- the age, health, level of intellectual functioning, and emotional condition of the child;
- whether the child has knowledge material to the proof of or defense to any essential element of the crime;
- whether the child has provided a full written, taped, or transcribed account of his or her proposed testimony for trial; or
- whether the child's testimony will relate only to a peripheral issue in the case.

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**Explanation of amendments:**

AM364 to LB459 would strike the words "or police department" from page 2 of the bill.

As amended, the bill would provide that no request for a deposition shall be granted for a child under the age of 16 who has been interviewed at a child advocacy center if the interview was video recorded, except by agreement of the parties or by approval of the court.

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Les Seiler, Chairperson