

House File 2639 - Introduced

HOUSE FILE 2639
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2135)

A BILL FOR

1 An Act relating to limitations on discovery depositions involving
2 minor victims.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. NEW SECTION. **701.14 Discovery depositions**
2 **involving minor victims — procedures and protections.**

3 1. As used in this section:

4 a. "*Deponent abuse*" means conduct by an attorney during a
5 deposition that:

6 (1) Employs questions or comments designed primarily to
7 humiliate, intimidate, or emotionally distress the minor deponent
8 rather than to elicit relevant information.

9 (2) Requires the minor deponent to repeatedly describe the
10 same traumatic events when such repetition serves no legitimate
11 discovery purpose.

12 (3) Uses a tone, volume, or manner of questioning that is
13 threatening, mocking, or belittling toward the minor deponent.

14 (4) Makes statements that blame or shame the minor deponent
15 for the alleged criminal conduct.

16 (5) Asks questions about the minor deponent's sexual history
17 or reputation that are not directly relevant to the charged
18 offense and admissible under applicable rules of evidence.

19 (6) Continues questioning after the minor deponent has
20 exhibited significant emotional distress without allowing a
21 reasonable recess.

22 (7) Engages in any other conduct that a reasonable person
23 would recognize as designed to cause unnecessary psychological
24 harm to the minor deponent.

25 b. "*Forensic interview*" means a video and audio recorded
26 statement obtained by a forensic interviewer employed by
27 an accredited child advocacy center or child protection
28 center, conducted substantially in accordance with a nationally
29 recognized protocol for interviewing children.

30 c. "*Minor*" means a person under eighteen years of age.

31 d. "*Trauma-informed practices*" means approaches to
32 questioning that minimize retraumatization while still permitting
33 thorough inquiry, including but not limited to developmentally
34 appropriate language, nonleading questions when possible, and
35 awareness of trauma responses.

1 2. Notwithstanding any other provision of law, there is
2 a rebuttable presumption in favor of permitting a discovery
3 deposition of a minor victim in a criminal action when defense
4 counsel demonstrates to the court, by a preponderance of the
5 evidence, that such deposition is critical to the defendant's
6 ability to receive an adequate and fair trial.

7 3. Defense counsel seeking to depose a minor victim shall
8 file a written application with the court, which may be submitted
9 under seal and heard in camera at the request of either party.
10 The application shall set forth with particularity:

11 a. The specific factual matters or areas of inquiry that
12 defense counsel seeks to explore through the deposition.

13 b. The reasons why the requested information is critical to
14 the defense including but not limited to:

15 (1) Facts necessary to complete the investigation that are
16 known only to the proposed deponent.

17 (2) Ambiguities, inconsistencies, or gaps in the minor
18 victim's prior statements that require clarification.

19 (3) Information needed to evaluate or challenge the
20 credibility of the allegations.

21 (4) Facts relevant to an affirmative defense or to negating
22 an element of the charged offense.

23 (5) Information necessary to identify or locate other
24 witnesses or evidence.

25 (6) Matters that could not reasonably be explored through
26 alternative discovery methods.

27 c. A description of efforts made to obtain the information
28 through other discovery methods, including but not limited
29 to review of the forensic interview, written interrogatories,
30 requests for production, or depositions of other witnesses.

31 d. An estimate of the time reasonably necessary to complete
32 the deposition.

33 e. A proposed plan for minimizing trauma to the minor
34 deponent, including proposed location, timing, and any
35 accommodations.

1 4. In ruling on an application under subsection 3, the court
2 shall weigh:

3 a. The importance of the requested information to the
4 defendant's ability to present a meaningful defense.

5 b. Whether the information sought is available through less
6 intrusive means, including review of the forensic interview or
7 other discovery.

8 c. The age and developmental level of the minor victim.

9 d. The nature and severity of the alleged offense.

10 e. The potential psychological impact on the minor victim.

11 f. The length of time since the alleged offense occurred.

12 g. Whether the minor victim has received therapeutic
13 treatment that could be disrupted by the deposition.

14 h. The existence and quality of any forensic interview or
15 other recorded statement.

16 i. Any other factors the court deems relevant to balancing
17 the defendant's constitutional rights against the welfare of the
18 minor victim.

19 5. If the court grants the application, the court shall issue
20 an order specifying all of the following:

21 a. The specific topics or areas of inquiry permitted.

22 b. Topics or questions that are prohibited.

23 c. The maximum duration of the deposition.

24 d. Any other limitations the court deems appropriate to
25 protect the minor victim while permitting meaningful discovery.

26 6. All depositions of minor victims conducted pursuant to
27 this section shall be subject to the following mandatory
28 protections:

29 a. (1) The deposition shall be conducted at a location
30 chosen by the minor deponent or counsel for the minor deponent,
31 which may include:

32 (a) A child advocacy center or child protection center.

33 (b) The office of the prosecuting attorney.

34 (c) A neutral location approved by the court.

35 (d) Any other location where the minor deponent feels safe

1 and comfortable.

2 (2) The deposition shall not be conducted in a jail, prison,
3 law enforcement facility, or the office of defense counsel unless
4 the minor deponent affirmatively consents.

5 b. The deposition shall be scheduled at a time that minimizes
6 disruption to the minor deponent's school attendance, therapeutic
7 appointments, and regular activities.

8 c. The deposition shall be recorded by video and audio. The
9 recording shall be maintained under seal by the court and shall
10 not be disclosed except as provided by court order.

11 d. (1) The minor deponent shall be entitled to have present
12 during the deposition any of the following:

13 (a) A parent, guardian, or other supportive adult of the
14 minor's choosing, provided such person is not a defendant or
15 potential witness in the case.

16 (b) A victim advocate or support animal, at the minor
17 deponent's request.

18 (c) A therapist or mental health professional familiar with
19 the minor deponent, at the minor deponent's request.

20 (2) Support persons in attendance pursuant to subparagraph
21 (1) shall not answer questions on behalf of the minor deponent,
22 coach the minor deponent, or otherwise interfere with the
23 deposition, but may provide comfort through physical proximity
24 and may request recesses when the minor deponent exhibits
25 significant distress.

26 e. The minor deponent or any support person may request
27 breaks at any time. Breaks shall be granted liberally. In no
28 event shall the minor deponent be required to participate in
29 questioning for more than one hour without a break of at least
30 fifteen minutes.

31 f. The minor deponent shall be entitled to have counsel
32 present during the deposition to assert objections and protect
33 the minor deponent's interests. If the minor deponent is not
34 otherwise represented, the court shall appoint counsel or a
35 guardian ad litem to represent the minor deponent's interests at

1 the deposition.

2 g. (1) Only one attorney for each party shall be permitted
3 to question the minor deponent.

4 (2) Questions shall be phrased in language appropriate to the
5 minor deponent's age and developmental level.

6 (3) Compound, confusing, or misleading questions shall not be
7 permitted.

8 (4) The attorney conducting the deposition shall use
9 trauma-informed practices.

10 h. Upon request of the minor deponent or counsel for the
11 minor deponent:

12 (1) The minor deponent may testify from behind a screen or
13 one-way mirror that shields the minor deponent from direct view
14 of the defendant, while permitting the defendant to observe the
15 minor deponent.

16 (2) The deposition may be conducted via contemporaneous
17 two-way video technology that permits the minor deponent to be
18 in a separate room from the defendant and defense counsel.

19 (3) The room shall be arranged to minimize intimidation,
20 which may include seating the minor deponent at the same level as
21 counsel, removing the defendant from the minor deponent's direct
22 line of sight, or other accommodations.

23 i. The defendant may be excluded from the room where the
24 minor deponent is physically located but shall have the right to
25 observe the deposition via contemporaneous video transmission and
26 to communicate with defense counsel through electronic means.

27 7. Prior to conducting a deposition of a minor victim under
28 this section, the attorney conducting the deposition shall file a
29 certification with the court attesting that:

30 a. The attorney has reviewed the court's order regarding
31 permitted and prohibited areas of inquiry.

32 b. The attorney has reviewed materials on trauma-informed
33 questioning of minors.

34 c. The attorney understands and will comply with the
35 mandatory protections set forth in this section.

1 d. The attorney understands the sanctions that may be imposed
2 for deponent abuse.

3 8. a. Counsel for the minor deponent or the prosecuting
4 attorney may object to any question that exceeds the scope
5 permitted by the court's order or that constitutes deponent
6 abuse. Upon such objection, the minor deponent shall not be
7 required to answer until the objection is resolved.

8 b. If a pattern of improper questioning emerges, counsel for
9 the minor deponent or the prosecuting attorney may suspend the
10 deposition and seek immediate telephonic review by the court.

11 c. The court may, upon review, terminate the deposition,
12 limit its scope further, or impose immediate sanctions.

13 9. a. Upon motion of the prosecuting attorney, counsel for
14 the minor deponent, or upon the court's own motion, the court
15 shall conduct a hearing to determine whether deponent abuse
16 occurred during a deposition conducted under this section.

17 b. If the court finds by a preponderance of the evidence that
18 deponent abuse occurred, the court shall impose one or more of
19 the following sanctions:

20 (1) A fine against the offending attorney of not less than
21 one thousand dollars and not more than twenty-five thousand
22 dollars per instance of abuse.

23 (2) An order requiring the offending attorney or the
24 attorney's client to pay all costs associated with the
25 deposition, including but not limited to court reporter fees,
26 videographer fees, fees for counsel for the minor deponent, and
27 fees for any mental health professionals required to be present.

28 (3) An order requiring the offending attorney or the
29 attorney's client to pay for any additional therapeutic treatment
30 required by the minor deponent as a result of the deponent abuse.

31 (4) An order excluding from evidence at trial any testimony
32 obtained through abusive questioning.

33 (5) An order permitting the prosecuting attorney to inform
34 the jury that testimony was excluded due to defense counsel's
35 abusive conduct, or permitting an adverse inference instruction.

1 (6) Immediate termination of the deposition with no right to
2 reconvene.

3 (7) An order prohibiting the offending attorney from
4 conducting any further depositions of minors in any case for a
5 period of not less than one year.

6 (8) Referral of the offending attorney to the appropriate
7 attorney disciplinary authority for professional misconduct.

8 (9) A finding of contempt of court, with appropriate civil or
9 criminal penalties.

10 (10) In cases of egregious or repeated abuse, preclusion of
11 defenses, or other case-dispositive sanctions as the court deems
12 just.

13 c. The court shall state on the record or in a written order
14 the specific conduct constituting deponent abuse and the reasons
15 for the sanctions imposed.

16 d. Sanctions under this subsection are in addition to any
17 other remedies available under the Iowa rules of civil procedure,
18 the Iowa rules of criminal procedure, or other applicable law.

19 e. An attorney sanctioned under this subsection may appeal
20 the sanction, but such appeal shall not stay the effect of the
21 sanction unless the court so orders.

22 10. a. A deposition taken under this section may be used at
23 trial in accordance with the Iowa rules of evidence and the Iowa
24 rules of criminal procedure.

25 b. Nothing in this section shall be construed to limit the
26 minor victim's right to testify at trial or the defendant's right
27 to confront and cross-examine the minor victim at trial.

28 11. a. All applications, orders, and proceedings under this
29 section may be conducted under seal and in camera upon request of
30 any party.

31 b. The video recording of any deposition conducted under
32 this section shall be maintained under seal and shall not be
33 released, copied, or disseminated except by court order for
34 purposes directly related to the criminal proceeding.

35 c. Violation of the confidentiality provisions of this

1 subsection shall be punishable as contempt of court and may
2 result in sanctions as provided in subsection 9.

3 12. a. This section shall be construed to balance the
4 defendant's constitutional rights to due process and effective
5 assistance of counsel with the state's compelling interest in
6 protecting minor victims from unnecessary trauma and promoting
7 the accurate and reliable testimony of child witnesses.

8 b. Nothing in this section shall be construed to limit any
9 rights of the defendant under the Constitution of the United
10 States or the Constitution of the State of Iowa.

11 c. If any provision of this section or its application to any
12 person or circumstance is held invalid, the invalidity does not
13 affect other provisions or applications of this section that can
14 be given effect without the invalid provision or application.

15 EXPLANATION

16 The inclusion of this explanation does not constitute agreement with
17 the explanation's substance by the members of the general assembly.

18 This bill relates to limitations on discovery depositions
19 involving minor victims.

20 The bill provides that there shall be a rebuttable presumption
21 in favor of permitting a discovery deposition of a minor victim
22 in a criminal action when defense counsel demonstrates to the
23 court, by a preponderance of the evidence, that such deposition
24 is critical to the defendant's ability to receive an adequate
25 and fair trial. Defense counsel seeking to depose a minor
26 victim must file a written application with the court, which
27 sets forth with particularity: the specific factual matters or
28 areas of inquiry that defense counsel seeks to explore through
29 the deposition; the reasons why the requested information is
30 critical to the defense; a description of efforts made to
31 obtain the information through other discovery methods, including
32 but not limited to review of the forensic interview, written
33 interrogatories, requests for production, or depositions of other
34 witnesses; an estimate of the time reasonably necessary to
35 complete the deposition; and a proposed plan for minimizing

1 trauma to the minor deponent, including proposed location,
2 timing, and any accommodations.

3 The bill provides that in ruling on an application the
4 court shall weigh: the importance of the requested information
5 to the defendant's ability to present a meaningful defense;
6 whether the information sought is available through less
7 intrusive means, including review of the forensic interview
8 or other discovery; the age and developmental level of the
9 minor victim; the nature and severity of the alleged offense;
10 the potential psychological impact on the minor victim; the
11 length of time since the alleged offense occurred; whether the
12 minor victim has received therapeutic treatment that could be
13 disrupted by the deposition; the existence and quality of any
14 forensic interview or other recorded statement; and any other
15 factors the court deems relevant to balancing the defendant's
16 constitutional rights against the welfare of the minor victim.
17 If the court grants the application, the court shall issue
18 an order specifying: the specific topics or areas of inquiry
19 permitted; topics or questions that are prohibited; the maximum
20 duration of the deposition; and any other limitations the court
21 deems appropriate to protect the minor victim while permitting
22 meaningful discovery.

23 The bill specifies that all depositions of minor victims
24 conducted pursuant to this section shall be subject to the
25 following mandatory protections: the deposition shall be
26 conducted at a location chosen by the minor deponent or counsel
27 for the minor deponent; the deposition shall not be conducted
28 in a jail, prison, law enforcement facility, or the office of
29 defense counsel unless the minor deponent affirmatively consents;
30 the deposition shall be scheduled at a time that minimizes
31 disruption to the minor deponent's school attendance, therapeutic
32 appointments, and regular activities; and the deposition shall
33 be recorded by video and audio. The minor deponent shall be
34 entitled to have present during the deposition: a parent,
35 guardian, or other supportive adult of the minor's choosing,

1 provided such person is not a defendant or potential witness
2 in the case; a victim advocate or support animal, at the
3 minor deponent's request; and a therapist or mental health
4 professional familiar with the minor deponent, at the minor
5 deponent's request. The minor deponent may testify from behind
6 a screen or one-way mirror that shields the minor deponent from
7 direct view of the defendant, while permitting the defendant to
8 observe the minor deponent. The deposition may be conducted
9 via contemporaneous two-way video technology that permits the
10 minor deponent to be in a separate room from the defendant
11 and defense counsel. Counsel for the minor deponent or the
12 prosecuting attorney may object to any question that exceeds the
13 scope permitted by the court's order or that constitutes deponent
14 abuse. Upon such objection, the minor deponent shall not be
15 required to answer until the objection is resolved. If a pattern
16 of improper questioning emerges, counsel for the minor deponent
17 or the prosecuting attorney may suspend the deposition and seek
18 immediate telephonic review by the court. The court may, upon
19 review, terminate the deposition, limit its scope further, or
20 impose immediate sanctions.

21 The bill provides that upon motion of the prosecuting attorney
22 or counsel for the minor deponent, or upon the court's own
23 motion, the court shall conduct a hearing to determine whether
24 deponent abuse occurred during a deposition conducted under this
25 section. If the court finds by a preponderance of the evidence
26 that deponent abuse occurred, the court shall impose one or
27 more of the following sanctions: a fine against the offending
28 attorney of not less than \$1,000 and not more than \$25,000 per
29 instance of abuse; an order requiring the offending attorney
30 or the attorney's client to pay all costs associated with the
31 deposition; an order requiring the offending attorney or the
32 attorney's client to pay for any additional therapeutic treatment
33 required by the minor deponent as a result of the deponent abuse;
34 an order excluding from evidence at trial any testimony obtained
35 through abusive questioning; an order permitting the prosecuting

1 attorney to inform the jury that testimony was excluded due
2 to defense counsel's abusive conduct, or permitting an adverse
3 inference instruction; immediate termination of the deposition
4 with no right to reconvene; an order prohibiting the offending
5 attorney from conducting any further depositions of minors in
6 any case for a period of not less than one year; referral of
7 the offending attorney to the appropriate attorney disciplinary
8 authority for professional misconduct; a finding of contempt of
9 court, with appropriate civil or criminal penalties; or in cases
10 of egregious or repeated abuse, preclusion of defenses, or other
11 case-dispositive sanctions as the court deems just.

12 The bill defines "deponent abuse", "forensic interview",
13 "minor", and "trauma-informed practices".

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