

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
2 involving minor victims.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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
8 deponent 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
17 history or reputation that are not directly relevant to the
18 charged offense and admissible under applicable rules of
19 evidence.

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

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

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

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

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

1 possible, and awareness of trauma responses.

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

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

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

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

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

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

21 (3) Information needed to evaluate or challenge the
22 credibility of the allegations.

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

25 (5) Information necessary to identify or locate other
26 witnesses or evidence.

27 (6) Matters that could not reasonably be explored through
28 alternative discovery methods.

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

33 d. An estimate of the time reasonably necessary to complete
34 the deposition.

35 e. A proposed plan for minimizing trauma to the minor

1 deponent, including proposed location, timing, and any
2 accommodations.

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

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

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

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

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

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

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

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

16 h. The existence and quality of any forensic interview or
17 other recorded statement.

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

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

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

24 b. Topics or questions that are prohibited.

25 c. The maximum duration of the deposition.

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

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

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

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

35 (b) The office of the prosecuting attorney.

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

2 (d) Any other location where the minor deponent feels safe
3 and comfortable.

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

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

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

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

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

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

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

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

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

33 *f.* The minor deponent shall be entitled to have counsel
34 present during the deposition to assert objections and protect
35 the minor deponent's interests. If the minor deponent is not

1 otherwise represented, the court shall appoint counsel or a
2 guardian ad litem to represent the minor deponent's interests
3 at the deposition.

4 *g.* (1) Only one attorney for each party shall be permitted
5 to question the minor deponent.

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

8 (3) Compound, confusing, or misleading questions shall not
9 be permitted.

10 (4) The attorney conducting the deposition shall use
11 trauma-informed practices.

12 *h.* Upon request of the minor deponent or counsel for the
13 minor deponent:

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

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

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

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

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

33 *a.* The attorney has reviewed the court's order regarding
34 permitted and prohibited areas of inquiry.

35 *b.* The attorney has reviewed materials on trauma-informed

1 questioning of minors.

2 *c.* The attorney understands and will comply with the
3 mandatory protections set forth in this section.

4 *d.* The attorney understands the sanctions that may be
5 imposed for deponent abuse.

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

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

14 *c.* The court may, upon review, terminate the deposition,
15 limit its scope further, or impose immediate sanctions.

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

20 *b.* If the court finds by a preponderance of the evidence
21 that deponent abuse occurred, the court shall impose one or
22 more of the following sanctions:

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

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

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

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

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

7 (6) Immediate termination of the deposition with no right
8 to reconvene.

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

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

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

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

19 *c.* The court shall state on the record or in a written
20 order the specific conduct constituting deponent abuse and the
21 reasons for the sanctions imposed.

22 *d.* Sanctions under this subsection are in addition to
23 any other remedies available under the Iowa rules of civil
24 procedure, the Iowa rules of criminal procedure, or other
25 applicable law.

26 *e.* An attorney sanctioned under this subsection may appeal
27 the sanction, but such appeal shall not stay the effect of the
28 sanction unless the court so orders.

29 10. *a.* A deposition taken under this section may be used
30 at trial in accordance with the Iowa rules of evidence and the
31 Iowa rules of criminal procedure.

32 *b.* Nothing in this section shall be construed to limit the
33 minor victim's right to testify at trial or the defendant's
34 right to confront and cross-examine the minor victim at trial.

35 11. *a.* All applications, orders, and proceedings under this

1 section may be conducted under seal and in camera upon request
2 of any party.

3 *b.* The video recording of any deposition conducted under
4 this section shall be maintained under seal and shall not be
5 released, copied, or disseminated except by court order for
6 purposes directly related to the criminal proceeding.

7 *c.* Violation of the confidentiality provisions of this
8 subsection shall be punishable as contempt of court and may
9 result in sanctions as provided in subsection 9.

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

15 *b.* Nothing in this section shall be construed to limit any
16 rights of the defendant under the Constitution of the United
17 States or the Constitution of the State of Iowa.

18 *c.* If any provision of this section or its application to
19 any person or circumstance is held invalid, the invalidity does
20 not affect other provisions or applications of this section
21 that can be given effect without the invalid provision or
22 application.

23

EXPLANATION

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

26 This bill relates to limitations on discovery depositions
27 involving minor victims.

28 The bill provides that there shall be a rebuttable
29 presumption in favor of permitting a discovery deposition
30 of a minor victim in a criminal action when defense counsel
31 demonstrates to the court, by a preponderance of the evidence,
32 that such deposition is critical to the defendant's ability to
33 receive an adequate and fair trial. Defense counsel seeking
34 to depose a minor victim must file a written application
35 with the court, which sets forth with particularity: the

1 specific factual matters or areas of inquiry that defense
2 counsel seeks to explore through the deposition; the reasons
3 why the requested information is critical to the defense; a
4 description of efforts made to obtain the information through
5 other discovery methods, including but not limited to review of
6 the forensic interview, written interrogatories, requests for
7 production, or depositions of other witnesses; an estimate of
8 the time reasonably necessary to complete the deposition; and
9 a proposed plan for minimizing trauma to the minor deponent,
10 including proposed location, timing, and any accommodations.

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

31 The bill specifies that all depositions of minor victims
32 conducted pursuant to this section shall be subject to the
33 following mandatory protections: the deposition shall be
34 conducted at a location chosen by the minor deponent or
35 counsel for the minor deponent; the deposition shall not

1 be conducted in a jail, prison, law enforcement facility,
2 or the office of defense counsel unless the minor deponent
3 affirmatively consents; the deposition shall be scheduled at a
4 time that minimizes disruption to the minor deponent's school
5 attendance, therapeutic appointments, and regular activities;
6 and the deposition shall be recorded by video and audio. The
7 minor deponent shall be entitled to have present during the
8 deposition: a parent, guardian, or other supportive adult of
9 the minor's choosing, provided such person is not a defendant
10 or potential witness in the case; a victim advocate or support
11 animal, at the minor deponent's request; and a therapist or
12 mental health professional familiar with the minor deponent, at
13 the minor deponent's request. The minor deponent may testify
14 from behind a screen or one-way mirror that shields the minor
15 deponent from direct view of the defendant, while permitting
16 the defendant to observe the minor deponent. The deposition
17 may be conducted via contemporaneous two-way video technology
18 that permits the minor deponent to be in a separate room from
19 the defendant and defense counsel. Counsel for the minor
20 deponent or the prosecuting attorney may object to any question
21 that exceeds the scope permitted by the court's order or that
22 constitutes deponent abuse. Upon such objection, the minor
23 deponent shall not be required to answer until the objection
24 is resolved. If a pattern of improper questioning emerges,
25 counsel for the minor deponent or the prosecuting attorney
26 may suspend the deposition and seek immediate telephonic
27 review by the court. The court may, upon review, terminate
28 the deposition, limit its scope further, or impose immediate
29 sanctions.

30 The bill provides that upon motion of the prosecuting
31 attorney or counsel for the minor deponent, or upon the court's
32 own motion, the court shall conduct a hearing to determine
33 whether deponent abuse occurred during a deposition conducted
34 under this section. If the court finds by a preponderance
35 of the evidence that deponent abuse occurred, the court

1 shall impose one or more of the following sanctions: a fine
2 against the offending attorney of not less than \$1,000 and not
3 more than \$25,000 per instance of abuse; an order requiring
4 the offending attorney or the attorney's client to pay all
5 costs associated with the deposition; an order requiring the
6 offending attorney or the attorney's client to pay for any
7 additional therapeutic treatment required by the minor deponent
8 as a result of the deponent abuse; an order excluding from
9 evidence at trial any testimony obtained through abusive
10 questioning; an order permitting the prosecuting attorney to
11 inform the jury that testimony was excluded due to defense
12 counsel's abusive conduct, or permitting an adverse inference
13 instruction; immediate termination of the deposition with no
14 right to reconvene; an order prohibiting the offending attorney
15 from conducting any further depositions of minors in any
16 case for a period of not less than one year; referral of the
17 offending attorney to the appropriate attorney disciplinary
18 authority for professional misconduct; a finding of contempt
19 of court, with appropriate civil or criminal penalties; or in
20 cases of egregious or repeated abuse, preclusion of defenses,
21 or other case-dispositive sanctions as the court deems just.
22 The bill defines "deponent abuse", "forensic interview",
23 "minor", and "trauma-informed practices".