

AMENDMENTS TO LB43

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 8 of this act shall be known and may be
4 cited as the Sexual Assault Survivors' Bill of Rights Act.

5 Sec. 2. For the purposes of the Sexual Assault Survivors' Bill of
6 Rights Act:

7 (1)(a) Advocate means:

8 (i) Any employee or supervised volunteer of a domestic violence and
9 sexual assault victim assistance program or of any other agency,
10 business, or organization that is not affiliated with a law enforcement
11 or prosecutor's office, whose primary purpose is assisting domestic
12 violence and sexual assault victims. This includes employees or
13 supervised volunteers of an Indian tribe or a postsecondary educational
14 institution;

15 (ii) A representative from a victim or witness assistance center; or

16 (iii) An advocate who is employed by a child advocacy center that
17 meets the requirements of subsection (2) of section 28-728.

18 (b) If reasonably possible, an advocate shall speak the survivor's
19 preferred language or use the services of a qualified interpreter;

20 (2) Health care provider means any individual who is licensed,
21 certified, or registered to perform specified health services consistent
22 with state law;

23 (3) Sexual assault means a violation of section 28-319, 28-319.01,
24 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04,
25 28-322.05, or 28-703, sex trafficking or sex trafficking of a minor under
26 section 28-831, or subdivision (1)(c) or (g) of section 28-386 or
27 subdivision (1)(d), (e), or (f) of section 28-707;

1 (4) Sexual assault forensic evidence means any human biological
2 specimen collected by a health care provider during a forensic medical
3 examination from a reported survivor, including, but not limited to, a
4 toxicology kit; and

5 (5)(a) Sexual assault survivor or survivor means any person who is a
6 victim of sexual assault who reports such sexual assault:

7 (i) To a health care provider, law enforcement, or an advocate,
8 including anonymous reporting as provided in section 28-902; and

9 (ii) In the case of a victim who is under eighteen years of age, to
10 the Department of Health and Human Services.

11 (b) Sexual assault survivor or survivor also includes, if the
12 survivor described in subdivision (5)(a) of this section is incompetent,
13 deceased, or a minor who is unable to consent to counseling services,
14 such survivor's parent, guardian, or spouse, unless such person is the
15 reported assailant.

16 Sec. 3. Notwithstanding any provision of Chapter 27, article 5, any
17 communication with a survivor which is privileged, whether by statute,
18 court order, or common law, shall retain such privilege regardless of who
19 is present during the communication so long as the survivor has a
20 privilege with respect to each individual present.

21 Sec. 4. (1) A survivor has the right to have an advocate of the
22 survivor's choosing present during a medical evidentiary or physical
23 examination. The health care provider shall contact the advocate before
24 beginning the medical evidentiary or physical examination, unless
25 declined by the survivor. If an advocate cannot appear in a timely
26 manner, the health care provider shall inform the survivor of the
27 potential impact of delaying the examination.

28 (2) A survivor retains such right to have an advocate present at any
29 time during any medical evidentiary or physical examination, regardless
30 of whether the survivor has previously waived such right.

31 (3) A survivor has the right to a free forensic medical examination

1 as provided in section 81-1429.03 without regard to whether a survivor
2 participates in the criminal justice system or cooperates with law
3 enforcement.

4 (4) A survivor has the right to be provided health care in
5 accordance with best practices and established protocols for age-
6 appropriate sexual assault forensic medical examinations as set forth in
7 publications of the Office on Violence Against Women of the United States
8 Department of Justice or other organizations with similar expertise on
9 sexual assault forensic examinations.

10 (5) A survivor has the protection of confidential communications as
11 provided in sections 29-4301 to 29-4304.

12 (6) A survivor has the right to shower at no cost after the medical
13 evidentiary or physical examination, unless showering facilities are not
14 available.

15 (7) A survivor has the right to anonymous reporting as provided in
16 section 28-902.

17 Sec. 5. (1)(a) A survivor has the right to have an advocate present
18 during an interview by a peace officer, prosecutor, or defense attorney,
19 unless no advocate can appear in a reasonably timely manner. In an
20 interview involving a prosecutor, the prosecutor shall inform the
21 survivor of the survivor's rights under this subsection. The peace
22 officer, prosecutor, or defense attorney shall contact the advocate
23 before beginning the interview, unless declined by the survivor.

24 (b) A survivor has the right to have an advocate present during a
25 deposition as provided in sections 29-1917 and 29-1926.

26 (c) An advocate present at an interview or deposition under this
27 subsection shall not interfere in the interview or deposition or provide
28 legal advice.

29 (d) Nothing in this subsection shall preclude law enforcement
30 officers or prosecutors from contacting a survivor directly to make
31 limited inquiries regarding the sexual assault.

1 (2) A survivor has the right to be interviewed by a peace officer of
2 the gender of the survivor's choosing, if such request can be reasonably
3 accommodated by a peace officer that is properly trained to conduct such
4 interviews.

5 (3) A survivor has the right to be interviewed by a peace officer
6 that speaks the survivor's preferred language or to have a qualified
7 interpreter available, if such request can be reasonably accommodated.

8 (4) A peace officer, prosecutor, or defense attorney shall not, for
9 any reason, discourage a survivor from receiving a medical evidentiary or
10 physical examination.

11 (5) A survivor has the right to have an attorney present during all
12 stages of any interview, deposition, or other interaction with
13 representatives from the legal or criminal justice systems within this
14 state. This subsection does not create a new obligation by the state or a
15 political subdivision to appoint or pay for counsel. Treatment of the
16 survivor shall not be affected or altered in any way as a result of the
17 survivor's decision to exercise such right to counsel.

18 (6) A survivor who is a child three to eighteen years of age has the
19 right to a forensic interview at a child advocacy center by a
20 professional with specialized training as provided in section 28-728. The
21 right to have an advocate, representative, or attorney present shall not
22 apply during such a forensic interview.

23 Sec. 6. (1) A survivor has the right to prompt analysis of sexual
24 assault forensic evidence.

25 (2) Subject to section 28-902, a health care provider shall notify
26 the appropriate law enforcement agency of a survivor's reported sexual
27 assault and submit to law enforcement the sexual assault forensic
28 evidence, if evidence has been obtained.

29 (3) A law enforcement agency shall collect the sexual assault
30 forensic evidence upon notification by the health care provider and shall
31 retain the sexual assault forensic evidence for the longer of the statute

1 of limitations applicable to the sexual assault or the retention period
2 set forth in subsection (4) of section 28-902.

3 (4) A survivor has a right to contact the investigating law
4 enforcement agency and be provided with information on the status of the
5 processing and analysis of the survivor's sexual assault forensic
6 evidence, if the survivor did not report anonymously.

7 (5) A survivor has the right to have the results of the analysis of
8 the survivor's sexual assault forensic evidence uploaded to the
9 appropriate local, state, and federal DNA data bases, as allowed by law.

10 (6) A survivor has the right to be informed, upon the survivor's
11 request, of the results of analysis of the survivor's sexual assault
12 forensic evidence, whether the analysis yielded a DNA profile, and
13 whether the analysis yielded a DNA match, either to the named perpetrator
14 or to a suspect already in the Federal Bureau of Investigation's Combined
15 DNA Index System.

16 (7) A survivor has the right to inspect or request copies of law
17 enforcement reports concerning the sexual assault at the conclusion of
18 the case.

19 Sec. 7. Sexual assault forensic evidence from a survivor shall not
20 be used:

21 (1) To prosecute such survivor for any misdemeanor crime or any
22 crime under the Uniform Controlled Substances Act; or

23 (2) As a basis to search for further evidence of any misdemeanor
24 crime or any crime under the Uniform Controlled Substances Act that may
25 have been committed by the survivor.

26 Sec. 8. (1) Upon an initial interaction with a survivor relating to
27 or arising from a sexual assault of such survivor, a health care provider
28 or peace officer, and in the case of a survivor under eighteen years of
29 age, the Department of Health and Human Services, shall provide the
30 survivor with information that explains the rights of survivors under the
31 Sexual Assault Survivors' Bill of Rights Act and other relevant law. The

1 information shall be presented in clear language that is comprehensible
2 to a person proficient in English at the fifth grade level, accessible to
3 persons with visual disabilities, and available in all major languages
4 spoken in this state. This information shall include, but not be limited
5 to:

6 (a) A clear statement that a survivor is not required to participate
7 in the criminal justice system or to undergo a medical evidentiary or
8 physical examination in order to retain the rights provided by the act
9 and other relevant law;

10 (b) Contact information for appropriate services provided by
11 professionals in the fields of domestic violence and sexual assault,
12 including advocates;

13 (c) State and federal relief available to victims of crime;

14 (d) Law enforcement protection available to the survivor, including
15 domestic violence protection orders, harassment protection orders, and
16 sexual assault protection orders and the process to obtain such
17 protection;

18 (e) Instructions for requesting information regarding the survivor's
19 sexual assault forensic evidence as provided in section 6 of this act;
20 and

21 (f) State and federal compensation funds for medical and other costs
22 associated with the sexual assault and information on any municipal,
23 state, or federal right to restitution for a survivor in the event of a
24 conviction.

25 (2) The information to be provided under subsection (1) of this
26 section shall be developed by the Attorney General and the Nebraska
27 Commission on Law Enforcement and Criminal Justice with input from
28 prosecutors, sexual assault survivors, and any organizations with a
29 statewide presence with expertise on domestic violence, sexual assault,
30 and child sexual assault.

31 (3) The information to be provided under subsection (1) of this

1 section shall be made available for viewing and download on the web sites
2 of the Department of Health and Human Services and the Nebraska
3 Commission on Law Enforcement and Criminal Justice. Other relevant state
4 agencies are also encouraged to make such information available on their
5 web sites.

6 Sec. 9. Section 29-119, Revised Statutes Supplement, 2019, is
7 amended to read:

8 29-119 For purposes of this section and sections 23-1201, 29-120,
9 and 29-2261, unless the context otherwise requires:

10 (1) A plea agreement means that as a result of a discussion between
11 the defense counsel and the prosecuting attorney:

12 (a) A charge is to be dismissed or reduced; or

13 (b) A defendant, if he or she pleads guilty to a charge, may receive
14 less than the maximum penalty permitted by law; and

15 (2)(a) Victim means a person who has had a personal confrontation
16 with an offender as a result of a homicide under sections 28-302 to
17 28-306, a first degree assault under section 28-308, a second degree
18 assault under section 28-309, a third degree assault under section 28-310
19 when the victim is an intimate partner as defined in section 28-323, a
20 first degree false imprisonment under section 28-314, a first degree
21 sexual assault under section 28-319, a sexual assault of a child in the
22 first degree under section 28-319.01, a second or third degree sexual
23 assault under section 28-320, a sexual assault of a child in the second
24 or third degree under section 28-320.01, domestic assault in the first,
25 second, or third degree under section 28-323, or a robbery under section
26 28-324. Victim also includes a person who has suffered serious bodily
27 injury as defined in section 28-109 as a result of a motor vehicle
28 accident when the driver was charged with a violation of section 60-6,196
29 or 60-6,197 or with a violation of a city or village ordinance enacted in
30 conformance with either section.

31 (b) In the case of a homicide, victim means the nearest surviving

1 relative under the law as provided by section 30-2303 but does not
2 include the alleged perpetrator of the homicide.

3 (c) In the case of a violation of section 28-813.01, 28-1463.03,
4 28-1463.04, or 28-1463.05, victim means a person who was a child as
5 defined in section 28-1463.02 and a participant or portrayed observer in
6 the visual depiction of sexually explicit conduct which is the subject of
7 the violation and who has been identified and can be reasonably notified.

8 (d) In the case of a sexual assault of a child, a possession offense
9 of a visual depiction of sexually explicit conduct, or a distribution
10 offense of a visual depiction of sexually explicit conduct, victim means
11 the child victim and the parents, guardians, or duly appointed legal
12 representative of the child victim but does not include the alleged
13 perpetrator of the crime.

14 (e) Victim also includes a person who was the victim of a theft
15 under section 28-511, 28-512, 28-513, or 28-517 when (i) the value of the
16 thing involved is five thousand dollars or more and (ii) the victim and
17 perpetrator were intimate partners as defined in section 28-323.

18 (f) Victim also includes a sexual assault survivor as defined in
19 section 2 of this act.

20 Sec. 10. Section 29-1917, Revised Statutes Supplement, 2019, is
21 amended to read:

22 29-1917 (1) Except as provided in section 29-1926, at any time after
23 the filing of an indictment or information in a felony prosecution, the
24 prosecuting attorney or the defendant may request the court to allow the
25 taking of a deposition of any person other than the defendant who may be
26 a witness in the trial of the offense. The court may order the taking of
27 the deposition when it finds the testimony of the witness:

28 (a) May be material or relevant to the issue to be determined at the
29 trial of the offense; or

30 (b) May be of assistance to the parties in the preparation of their
31 respective cases.

1 (2) An order granting the taking of a deposition shall include the
2 time and place for taking such deposition and such other conditions as
3 the court determines to be just.

4 (3) Except as provided in subsection (4) of this section, the The
5 proceedings in taking the deposition of a witness pursuant to this
6 section and returning it to the court shall be governed in all respects
7 as the taking of depositions in civil cases, including section 25-1223.

8 (4)(a) A sexual assault survivor shall have the right to have an
9 advocate of the survivor's choosing present during a deposition under
10 this section. The prosecuting attorney shall inform the survivor of such
11 right at least ten days prior to the deposition or, if that is not
12 possible, as soon as reasonably practicable prior to the deposition. If
13 the survivor wishes to have an advocate present, the survivor shall, if
14 reasonably practicable, inform the prosecuting attorney if an advocate
15 will be present, and, if known, the advocate's identity and contact
16 information. If so informed by the survivor, the prosecuting attorney
17 shall notify the defendant as soon as reasonably practicable.

18 (b) An advocate present at a deposition under this section shall not
19 interfere with the deposition or provide legal advice.

20 (c) For purposes of this subsection, the terms sexual assault
21 survivor, survivor, and advocate have the same meanings as in section 2
22 of this act.

23 (5) ~~(4)~~ A deposition taken pursuant to this section may be used at
24 the trial by any party solely for the purpose of contradicting or
25 impeaching the testimony of the deponent as a witness.

26 Sec. 11. Section 29-1926, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 29-1926 (1)(a) Upon request of the prosecuting or defense attorney
29 and upon a showing of compelling need, the court shall order the taking
30 of a videotape deposition of a child victim of or child witness to any
31 offense punishable as a felony. The deposition ordinarily shall be in

1 lieu of courtroom or in camera testimony by the child. If the court
2 orders a videotape deposition, the court shall:

3 (i) Designate the time and place for taking the deposition. The
4 deposition may be conducted in the courtroom, the judge's chambers, or
5 any other location suitable for videotaping;

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

8 (iii) Preside over the taking of the videotape deposition in the
9 same manner as if the child were called as a witness for the prosecution
10 during the course of the trial.

11 (b) Unless otherwise required by the court, the deposition shall be
12 conducted in the presence of the prosecuting attorney, the defense
13 attorney, the defendant, and any other person deemed necessary by the
14 court, including the parent or guardian of the child victim or child
15 witness, an advocate as defined in section 2 of this act, or a counselor
16 or other person with whom the child is familiar. Such parent, guardian,
17 advocate, counselor, or other person shall be allowed to sit with or near
18 the child unless the court determines that such person would be
19 disruptive to the child's testimony.

20 (c) At any time subsequent to the taking of the original videotape
21 deposition and upon sufficient cause shown, the court shall order the
22 taking of additional videotape depositions to be admitted at the time of
23 the trial.

24 (d) If the child testifies at trial in person rather than by
25 videotape deposition, the taking of the child's testimony may, upon
26 request of the prosecuting attorney and upon a showing of compelling
27 need, be conducted in camera.

28 (e) Unless otherwise required by the court, the child shall testify
29 in the presence of the prosecuting attorney, the defense attorney, the
30 defendant, and any other person deemed necessary by the court, including
31 the parent or guardian of the child victim or child witness, an advocate

1 as defined in section 2 of this act, or a counselor or other person with
2 whom the child is familiar. Such parent, guardian, advocate, counselor,
3 or other person shall be allowed to sit with or near the child unless the
4 court determines that such person would be disruptive to the child's
5 testimony. Unless waived by the defendant, all persons in the room shall
6 be visible on camera except the camera operator.

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

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

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

24 (i) The nature of the offense;

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

26 (iii) The likelihood of obtaining the child's testimony without
27 modification of trial procedure or with a different modification
28 involving less substantial digression from trial procedure than the
29 modification under consideration;

30 (iv) The child's age;

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

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

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

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

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

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

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

18 (2)(a) No custodian of a videotape of a child victim or child
19 witness alleging, explaining, denying, or describing an act of sexual
20 assault pursuant to section 28-319, 28-319.01, or 28-320.01 or child
21 abuse pursuant to section 28-707 as part of an investigation or
22 evaluation of the abuse or assault shall release or use a videotape or
23 copies of a videotape or consent, by commission or omission, to the
24 release or use of a videotape or copies of a videotape to or by any other
25 party without a court order, notwithstanding the fact that the child
26 victim or child witness has consented to the release or use of the
27 videotape or that the release or use is authorized under law, except as
28 provided in section 28-730 or pursuant to an investigation under the
29 Office of Inspector General of Nebraska Child Welfare Act. Any custodian
30 may release or consent to the release or use of a videotape or copies of
31 a videotape to law enforcement agencies or agencies authorized to

1 prosecute such abuse or assault cases on behalf of the state.

2 (b) The court order may govern the purposes for which the videotape
3 may be used, the reproduction of the videotape, the release of the
4 videotape to other persons, the retention and return of copies of the
5 videotape, and any other requirements reasonably necessary for the
6 protection of the privacy and best interests of the child victim or child
7 witness.

8 (c) Pursuant to section 29-1912, the defendant described in the
9 videotape may petition the district court in the county where the alleged
10 offense took place or where the custodian of the videotape resides for an
11 order releasing to the defendant a copy of the videotape.

12 (d) Any person who releases or uses a videotape except as provided
13 in this section shall be guilty of a Class I misdemeanor.

14 Sec. 12. Original section 29-1926, Reissue Revised Statutes of
15 Nebraska, and sections 29-119 and 29-1917, Revised Statutes Supplement,
16 2019, are repealed.