

ENGROSSED LEGISLATIVE BILL 103

Introduced by DeBoer, 10; Bosn, 25; Raybould, 28.

A BILL FOR AN ACT relating to evidence; to amend sections 27-412 and 29-1917, Revised Statutes Cumulative Supplement, 2024; to change provisions relating to admissibility of evidence of past sexual assaults and the procedure for taking depositions of certain witnesses; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 27-412, Revised Statutes Cumulative Supplement, 2024, is amended to read:

27-412 (1) The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (2) and (3) of this section:

(a) Evidence offered to prove that any victim engaged in other sexual behavior or has been the victim of any other sexual assault; and

(b) Evidence offered to prove any victim's sexual predisposition.

(2)(a) In a criminal case, the following evidence is admissible, if otherwise admissible under the Nebraska Evidence Rules:

(i) Evidence of specific instances of sexual behavior by the victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(ii) Evidence of specific instances of sexual behavior of the victim with respect to the accused offered by the accused to prove consent of the victim if it is first established to the court that such behavior is similar to the behavior involved in the case and tends to establish a pattern of behavior of the victim relevant to the issue of consent; and

(iii) Evidence, the exclusion of which would violate the constitutional rights of the accused.

(b) In a civil case, evidence offered to prove the sexual behavior or

sexual predisposition of any victim is admissible if it is otherwise admissible under the Nebraska Evidence Rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of a victim's reputation is admissible only if it has been placed in controversy by the victim.

(3)(a) A party intending to offer evidence under subsection (2) of this section shall:

(i) File a written motion at least fifteen days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(ii) Serve the motion on all parties and notify the victim or, when appropriate, the victim's guardian or representative.

(b) Before admitting evidence under this section, the court shall conduct a hearing in camera outside the presence of any jury.

(4) Evidence of the victim's consent is not admissible in any civil proceeding involving alleged:

(a) Sexual penetration when the actor is nineteen years of age or older and the victim is less than sixteen years of age; or

(b) Sexual contact when the actor is nineteen years of age or older and the victim is less than fifteen years of age.

Sec. 2. Section 29-1917, Revised Statutes Cumulative Supplement, 2024, is amended to read:

29-1917 (1) Except as provided in section 29-1926, 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 other than the defendant who may be a witness in the trial of the offense. The court may order the taking of the deposition when it finds the testimony of the witness:

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

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

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

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

(4)(a) If the prosecuting attorney or defendant seeks to question a witness at a deposition under this section regarding evidence admissible under subsection (2) of section 27-412 or regarding a prior alleged false allegation of sexual assault, such party shall state notice of intent to do so in the motion to depose the witness. Such notice shall not include the name or any identifying information of the witness, nor the grounds upon which the moving party believes such evidence may be relevant and admissible.

(b) If the opposing party objects to questioning described in subdivision (4)(a) of this section, such party shall file a written objection. Such written objection shall not include the name or identifying information of the witness, nor the grounds upon which that party believes the evidence is not relevant or admissible.

(c) Upon the filing of an objection under subdivision (4)(b) of this section, the court shall conduct an in camera hearing regarding such motion. Only the parties shall be permitted to be present at such hearing. The record of such hearing shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without a court order. Such hearing shall be conducted no fewer than seven days before any scheduled deposition in which a party seeks to adduce evidence pursuant to this subsection. At such hearing, the moving party shall state the grounds upon which the moving party believes such evidence may be relevant and admissible.

(d) The court shall allow questioning described in subdivision (4)(a) of this section if the court finds that such testimony could be relevant and admissible at trial.

(5)(a) A sexual assault victim may request to have an advocate of the victim's choosing present during a deposition under this section. The prosecuting attorney shall inform the victim that the victim may make such request as soon as reasonably practicable prior to the deposition. If the victim wishes to have an advocate present, the victim shall, if reasonably practicable, inform the prosecuting attorney if an advocate will be present, and, if known, the advocate's identity and contact information. If so informed by the victim, the prosecuting attorney shall notify the defendant as soon as reasonably practicable.

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

(c) For purposes of this subsection, the terms sexual assault victim, victim, and advocate have the same meanings as in section 29-4309.

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

Sec. 3. Original sections 27-412 and 29-1917, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 103 was passed by the One Hundred Ninth Legislature of Nebraska at its Second Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

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GOVERNOR