

AMENDMENTS TO LB43

Introduced by Bolz, 29.

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

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

5           Sec. 2. For the purposes of the Sexual Assault Victims' 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 and witness assistance center as  
16 established in sections 81-1845 to 81-1847 or a similar entity affiliated  
17 with a law enforcement agency or prosecutor's office; or

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

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

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

25           (3) Sexual assault means a violation of section 28-319, 28-319.01,  
26 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04,  
27 28-322.05, 28-703, or 28-1463.03, sex trafficking or sex trafficking of a

1 minor under section 28-831, or subdivision (1)(c) or (g) of section  
2 28-386 or subdivision (1)(d), (e), or (f) of section 28-707;

3 (4) Sexual assault forensic evidence means evidence collected by a  
4 health care provider contained within any sexual assault forensic  
5 evidence collection kit, including a toxicology kit, or any forensic  
6 evidence collected by law enforcement through the course of an  
7 investigation; and

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

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

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

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

19 Sec. 3. Notwithstanding any provision of Chapter 27, article 5, any  
20 communication with a victim which is privileged, whether by statute,  
21 court order, or common law, shall retain such privilege regardless of who  
22 is present during the communication so long as the victim has a privilege  
23 with respect to each individual present. Nothing in this section shall  
24 relieve the prosecutor of the prosecutor's duty to disclose and make  
25 known to the defendant or the defendant's attorney any and all  
26 exculpatory material or information suitable for impeachment which is  
27 known to the prosecutor.

28 Sec. 4. (1) A victim has the right to have an advocate of the  
29 victim's choosing present during a medical evidentiary or physical  
30 examination. The health care provider shall contact the advocate before  
31 beginning the medical evidentiary or physical examination, unless

1 declined by the victim. If an advocate cannot appear in a timely manner,  
2 the health care provider shall inform the victim of the potential impact  
3 of delaying the examination.

4 (2) A victim retains such right to have an advocate present at any  
5 time during any medical evidentiary or physical examination, regardless  
6 of whether the victim has previously waived such right.

7 (3) A victim has the right to a free forensic medical examination as  
8 provided in section 81-1429.03 without regard to whether a victim  
9 participates in the criminal justice system or cooperates with law  
10 enforcement.

11 (4) A victim has the right to be provided health care in accordance  
12 with best practices and established protocols for age-appropriate sexual  
13 assault forensic medical examinations as set forth in publications of the  
14 Office on Violence Against Women of the United States Department of  
15 Justice or other organizations with similar expertise on sexual assault  
16 forensic examinations.

17 (5) A victim has the protection of confidential communications as  
18 provided in sections 29-4301 to 29-4304.

19 (6) A victim has the right to shower at no cost after the medical  
20 evidentiary or physical examination, unless showering facilities are not  
21 available.

22 (7) A victim has the right to anonymous reporting as provided in  
23 section 28-902.

24 Sec. 5. (1)(a) A victim has the right to have an advocate present  
25 during an interview by a peace officer, prosecutor, or defense attorney,  
26 unless no advocate can appear in a reasonably timely manner. In an  
27 interview involving a prosecutor, the prosecutor shall inform the victim  
28 of the victim's rights under this subsection. The peace officer,  
29 prosecutor, or defense attorney shall contact the advocate before  
30 beginning the interview, unless declined by the victim.

31 (b) A victim has the right to have an advocate present during a

1 deposition as provided in sections 29-1917 and 29-1926.

2 (c) An advocate present at an interview or deposition under this  
3 subsection shall not interfere in the interview or deposition or provide  
4 legal advice.

5 (d) Nothing in this subsection shall preclude law enforcement  
6 officers or prosecutors from contacting a victim directly to make limited  
7 inquiries regarding the sexual assault.

8 (2) A victim has the right to be interviewed by a peace officer of  
9 the gender of the victim's choosing, if such request can be reasonably  
10 accommodated by a peace officer that is properly trained to conduct such  
11 interviews.

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

15 (4) A peace officer, prosecutor, or defense attorney shall not, for  
16 any reason, discourage a victim from receiving a medical evidentiary or  
17 physical examination.

18 (5) A victim has the right to counsel. This subsection does not  
19 create a new obligation by the state or a political subdivision to  
20 appoint or pay for counsel. Treatment of the victim shall not be affected  
21 or altered in any way as a result of the victim's decision to exercise  
22 such right to counsel.

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

28 Sec. 6. (1) A victim has the right to timely analysis of sexual  
29 assault forensic evidence.

30 (2) Subject to section 28-902, a health care provider shall notify  
31 the appropriate law enforcement agency of a victim's reported sexual

1 assault and submit to law enforcement the sexual assault forensic  
2 evidence, if evidence has been obtained.

3 (3) A law enforcement agency shall collect the sexual assault  
4 forensic evidence upon notification by the health care provider and shall  
5 retain the sexual assault forensic evidence for the longer of the statute  
6 of limitations applicable to the sexual assault or the retention period  
7 set forth in subsection (4) of section 28-902.

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

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

15 (6) A victim has the right to be informed by the investigating law  
16 enforcement agency, upon the victim's request, of the results of analysis  
17 of the victim's sexual assault forensic evidence, whether the analysis  
18 yielded a DNA profile, and whether the analysis yielded a DNA match,  
19 either to the named perpetrator or to a suspect already in the Federal  
20 Bureau of Investigation's Combined DNA Index System, so long as the  
21 provision of such information would not hinder or interfere with  
22 investigation or prosecution of the case associated with such  
23 information.

24 (7) A victim has the right to inspect or request copies of law  
25 enforcement reports concerning the sexual assault at the conclusion of  
26 the case.

27 Sec. 7. Sexual assault forensic evidence from a victim shall not be  
28 used:

29 (1) To prosecute such victim for any misdemeanor crime or any crime  
30 under the Uniform Controlled Substances Act; or

31 (2) As a basis to search for further evidence of any misdemeanor

1 crime or any crime under the Uniform Controlled Substances Act that may  
2 have been committed by the victim.

3       Sec. 8. (1) Upon an initial interaction with a victim relating to  
4 or arising from a sexual assault of such victim, a health care provider  
5 or peace officer, and in the case of a victim under eighteen years of  
6 age, the Department of Health and Human Services, shall provide the  
7 victim with information that explains the rights of victims under the  
8 Sexual Assault Victims' Bill of Rights Act and other relevant law. The  
9 information shall be presented in clear language that is comprehensible  
10 to a person proficient in English at the fifth grade level, accessible to  
11 persons with visual disabilities, and available in all major languages  
12 spoken in this state. This information shall include, but not be limited  
13 to:

14       (a) A clear statement that a victim is not required to participate  
15 in the criminal justice system or to undergo a medical evidentiary or  
16 physical examination in order to retain the rights provided by the act  
17 and other relevant law;

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

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

22       (d) Law enforcement protection available to the victim, including  
23 domestic violence protection orders, harassment protection orders, and  
24 sexual assault protection orders and the process to obtain such  
25 protection;

26       (e) Instructions for requesting information regarding the victim's  
27 sexual assault forensic evidence as provided in section 6 of this act;  
28 and

29       (f) State and federal compensation funds for medical and other costs  
30 associated with the sexual assault and information on any municipal,  
31 state, or federal right to restitution for a victim in the event of a

1 conviction.

2 (2) The information to be provided under subsection (1) of this  
3 section shall be developed by the Attorney General and the Nebraska  
4 Commission on Law Enforcement and Criminal Justice with input from  
5 prosecutors, sexual assault victims, and organizations with a statewide  
6 presence with expertise on domestic violence, sexual assault, and child  
7 sexual assault.

8 (3) The information to be provided under subsection (1) of this  
9 section shall be made available for viewing and download on the web sites  
10 of the Department of Health and Human Services and the Nebraska  
11 Commission on Law Enforcement and Criminal Justice. Other relevant state  
12 agencies are also encouraged to make such information available on their  
13 web sites.

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

16 29-119 For purposes of this section and sections 23-1201, 29-120,  
17 and 29-2261, unless the context otherwise requires:

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

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

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

23 (2)(a) Victim means a person who has had a personal confrontation  
24 with an offender as a result of a homicide under sections 28-302 to  
25 28-306, a first degree assault under section 28-308, a second degree  
26 assault under section 28-309, a third degree assault under section 28-310  
27 when the victim is an intimate partner as defined in section 28-323, a  
28 first degree false imprisonment under section 28-314, a first degree  
29 sexual assault under section 28-319, a sexual assault of a child in the  
30 first degree under section 28-319.01, a second or third degree sexual  
31 assault under section 28-320, a sexual assault of a child in the second

1 or third degree under section 28-320.01, domestic assault in the first,  
2 second, or third degree under section 28-323, or a robbery under section  
3 28-324. Victim also includes a person who has suffered serious bodily  
4 injury as defined in section 28-109 as a result of a motor vehicle  
5 accident when the driver was charged with a violation of section 60-6,196  
6 or 60-6,197 or with a violation of a city or village ordinance enacted in  
7 conformance with either section.

8 (b) In the case of a homicide, victim means the nearest surviving  
9 relative under the law as provided by section 30-2303 but does not  
10 include the alleged perpetrator of the homicide.

11 (c) In the case of a violation of section 28-813.01, 28-1463.03,  
12 28-1463.04, or 28-1463.05, victim means a person who was a child as  
13 defined in section 28-1463.02 and a participant or portrayed observer in  
14 the visual depiction of sexually explicit conduct which is the subject of  
15 the violation and who has been identified and can be reasonably notified.

16 (d) In the case of a sexual assault of a child, a possession offense  
17 of a visual depiction of sexually explicit conduct, or a distribution  
18 offense of a visual depiction of sexually explicit conduct, victim means  
19 the child victim and the parents, guardians, or duly appointed legal  
20 representative of the child victim but does not include the alleged  
21 perpetrator of the crime.

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

26 (f) Victim also includes a sexual assault victim as defined in  
27 section 2 of this act.

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

30 29-1917 (1) Except as provided in section 29-1926, at any time after  
31 the filing of an indictment or information in a felony prosecution, the



1 prosecuting attorney or the defendant may request the court to allow the  
2 taking of a deposition of any person other than the defendant who may be  
3 a witness in the trial of the offense. The court may order the taking of  
4 the deposition when it finds the testimony of the witness:

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

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

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

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

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

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

27 (c) For purposes of this subsection, the terms sexual assault  
28 victim, victim, and advocate have the same meanings as in section 2 of  
29 this act.

30 (5) (4) A deposition taken pursuant to this section may be used at  
31 the trial by any party solely for the purpose of contradicting or

1 impeaching the testimony of the deponent as a witness.

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

4 29-1926 (1)(a) Upon request of the prosecuting or defense attorney  
5 and upon a showing of compelling need, the court shall order the taking  
6 of a videotape deposition of a child victim of or child witness to any  
7 offense punishable as a felony. The deposition ordinarily shall be in  
8 lieu of courtroom or in camera testimony by the child. If the court  
9 orders a videotape deposition, the court shall:

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

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

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

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

27 (c) At any time subsequent to the taking of the original videotape  
28 deposition and upon sufficient cause shown, the court shall order the  
29 taking of additional videotape depositions to be admitted at the time of  
30 the trial.

31 (d) If the child testifies at trial in person rather than by

1 videotape deposition, the taking of the child's testimony may, upon  
2 request of the prosecuting attorney and upon a showing of compelling  
3 need, be conducted in camera.

4 (e) Unless otherwise required by the court, the child shall testify  
5 in the presence of the prosecuting attorney, the defense attorney, the  
6 defendant, and any other person deemed necessary by the court, including  
7 the parent or guardian of the child victim or child witness, an advocate  
8 as defined in section 2 of this act, or a counselor or other person with  
9 whom the child is familiar. Such parent, guardian, advocate, counselor,  
10 or other person shall be allowed to sit with or near the child unless the  
11 court determines that such person would be disruptive to the child's  
12 testimony. Unless waived by the defendant, all persons in the room shall  
13 be visible on camera except the camera operator.

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

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

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

31 (i) The nature of the offense;

- 1 (ii) The significance of the child's testimony to the case;
- 2 (iii) The likelihood of obtaining the child's testimony without
- 3 modification of trial procedure or with a different modification
- 4 involving less substantial digression from trial procedure than the
- 5 modification under consideration;
- 6 (iv) The child's age;
- 7 (v) The child's psychological maturity and understanding; and
- 8 (vi) The nature, degree, and duration of potential injury to the
- 9 child from testifying.

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

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

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

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

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

25 (2)(a) No custodian of a videotape of a child victim or child  
26 witness alleging, explaining, denying, or describing an act of sexual  
27 assault pursuant to section 28-319, 28-319.01, or 28-320.01 or child  
28 abuse pursuant to section 28-707 as part of an investigation or  
29 evaluation of the abuse or assault shall release or use a videotape or  
30 copies of a videotape or consent, by commission or omission, to the  
31 release or use of a videotape or copies of a videotape to or by any other

1 party without a court order, notwithstanding the fact that the child  
2 victim or child witness has consented to the release or use of the  
3 videotape or that the release or use is authorized under law, except as  
4 provided in section 28-730 or pursuant to an investigation under the  
5 Office of Inspector General of Nebraska Child Welfare Act. Any custodian  
6 may release or consent to the release or use of a videotape or copies of  
7 a videotape to law enforcement agencies or agencies authorized to  
8 prosecute such abuse or assault cases on behalf of the state.

9 (b) The court order may govern the purposes for which the videotape  
10 may be used, the reproduction of the videotape, the release of the  
11 videotape to other persons, the retention and return of copies of the  
12 videotape, and any other requirements reasonably necessary for the  
13 protection of the privacy and best interests of the child victim or child  
14 witness.

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

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

21 Sec. 12. Original section 29-1926, Reissue Revised Statutes of  
22 Nebraska, and sections 29-119 and 29-1917, Revised Statutes Supplement,  
23 2019, are repealed.