

AMENDMENTS TO LB103

Introduced by Judiciary.

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

3           **Section 1.** Section 27-412, Revised Statutes Cumulative Supplement,  
4 2024, is amended to read:

5           27-412 (1) The following evidence is not admissible in any civil or  
6 criminal proceeding involving alleged sexual misconduct except as  
7 provided in subsections (2) and (3) of this section:

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

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

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

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

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

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

23          (b) In a civil case, evidence offered to prove the sexual behavior  
24 or sexual predisposition of any victim is admissible if it is otherwise  
25 admissible under the Nebraska Evidence Rules and its probative value  
26 substantially outweighs the danger of harm to any victim and of unfair  
27 prejudice to any party. Evidence of a victim's reputation is admissible

1 only if it has been placed in controversy by the victim.

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

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

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

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

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

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

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

18 **Sec. 2.** Section 29-1917, Revised Statutes Cumulative Supplement,  
19 2024, is amended to read:

20 29-1917 (1) Except as provided in section 29-1926, at any time after  
21 the filing of an indictment or information in a felony prosecution, the  
22 prosecuting attorney or the defendant may request the court to allow the  
23 taking of a deposition of any person other than the defendant who may be  
24 a witness in the trial of the offense. The court may order the taking of  
25 the deposition when it finds the testimony of the witness:

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

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

30 (2) An order granting the taking of a deposition shall include the  
31 time and place for taking such deposition and such other conditions as

1 the court determines to be just.

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

7 (4)(a) If the prosecuting attorney or defendant seeks to question a  
8 sexual assault victim at a deposition under this section regarding  
9 evidence admissible under subsection (2) of section 27-412 or regarding a  
10 prior alleged false allegation of sexual assault, such party shall first  
11 file a motion requesting the court to allow such questioning. The  
12 requesting party shall state the grounds relied upon in support of such  
13 motion.

14 (b) A motion filed pursuant to this subsection shall be heard no  
15 fewer than seven days before any scheduled deposition in which a party  
16 seeks to adduce evidence pursuant to this subsection.

17 (c) A hearing on a motion under this subsection shall be conducted  
18 in camera, and only the parties shall be permitted to be present. The  
19 record of such hearing shall be sealed and preserved to be made available  
20 to the appellate court in the event of an appeal, and the contents shall  
21 not otherwise be revealed without a court order.

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

25 (5)(a) ~~(4)(a)~~ A sexual assault victim may request to have an  
26 advocate of the victim's choosing present during a deposition under this  
27 section. The prosecuting attorney shall inform the victim that the victim  
28 may make such request as soon as reasonably practicable prior to the  
29 deposition. If the victim wishes to have an advocate present, the victim  
30 shall, if reasonably practicable, inform the prosecuting attorney if an  
31 advocate will be present, and, if known, the advocate's identity and

1 contact information. If so informed by the victim, the prosecuting  
2 attorney shall notify the defendant as soon as reasonably practicable.

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

5 (c) For purposes of this subsection, the terms sexual assault  
6 victim, victim, and advocate have the same meanings as in section  
7 29-4309.

8 ~~(6) (5)~~ A deposition taken pursuant to this section may be used at  
9 the trial by any party solely for the purpose of contradicting or  
10 impeaching the testimony of the deponent as a witness.

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