

AMENDMENTS TO LB478

Introduced by Judiciary.

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

3 Section 1. Section 27-412, Reissue Revised Statutes of Nebraska, is
4 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; 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. Original section 27-412, Reissue Revised Statutes of
19 Nebraska, is repealed.