

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 43

Introduced by Bolz, 29.

Read first time January 10, 2019

Committee:

- 1 A BILL FOR AN ACT relating to victims' rights; to adopt the Sexual
- 2 Assault Survivors' Bill of Rights Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known and may be
2 cited as the Sexual Assault Survivors' Bill of Rights Act.

3 Sec. 2. For the purposes of the Sexual Assault Survivors' Bill of
4 Rights Act:

5 (1) Advocate means an advocate as defined in section 29-4302, a
6 representative from a victim or witness assistance center, or an advocate
7 who is employed by a child advocacy center that meets the requirements of
8 subsection (2) of section 28-728. If reasonably possible, an advocate
9 shall speak the survivor's preferred language or use the services of a
10 qualified interpreter;

11 (2) Health care provider means:

12 (a) Any of the following individuals who are licensed, certified, or
13 registered to perform specified health services consistent with state
14 law: A physician, physician assistant, nurse, or advanced practice
15 registered nurse; or

16 (b) Any other qualified person conducting a medical evidentiary or
17 physical examination of the survivor;

18 (3) Sexual assault means a violation of section 28-319, 28-319.01,
19 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04,
20 28-703, or 28-831 or subdivision (1)(c) or (g) of section 28-386 or
21 subdivision (1)(d), (e), or (f) of section 28-707;

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

26 (5) Sexual assault survivor or survivor means any person who is a
27 victim of sexual assault who reports such sexual assault to a health care
28 provider, law enforcement, or an advocate, including anonymous reporting
29 as provided in section 28-902. Sexual assault survivor or survivor also
30 includes, if the survivor is incompetent, deceased, or a minor who is
31 unable to consent to counseling services, the parent, guardian, spouse,

1 or any other person related to the survivor by consanguinity or affinity
2 to the second degree or any other lawful representative of the survivor,
3 unless such person is the reported assailant.

4 Sec. 3. The rights provided to a survivor in the Sexual Assault
5 Survivors' Bill of Rights Act apply whenever a survivor is subject to or
6 requested to undergo a medical evidentiary or physical examination or
7 subject to or requested to participate in an interview or deposition by a
8 peace officer, prosecutor, or defense attorney when such examination,
9 interview, or deposition relates to or arises out of the sexual assault
10 of such survivor and regardless of whether such survivor consents to such
11 examination, interview, or deposition.

12 Sec. 4. Notwithstanding any provision of Chapter 27, article 5, any
13 communication with a survivor which is privileged, whether by statute,
14 court order, or common law, shall retain such privilege regardless of who
15 is present during the communication so long as the survivor has some
16 basis for privilege with respect to each individual present and the
17 communication is in the furtherance of assisting the survivor to overcome
18 the sexual assault.

19 Sec. 5. A person accused or convicted of a crime against a survivor
20 shall not have standing to object to any failure to comply with the
21 Sexual Assault Survivors' Bill of Rights Act, and the failure to provide
22 a right or notice to a survivor under the act may not be used by such
23 person to seek to have his or her conviction or sentence set aside.

24 Sec. 6. (1) A survivor has the right to consult with and have
25 present an advocate of the survivor's choosing during a medical
26 evidentiary or physical examination. The health care provider shall
27 contact the advocate before beginning the medical evidentiary or physical
28 examination, unless declined by the survivor. If an advocate cannot
29 appear in a timely manner, the health care provider shall inform the
30 survivor of the potential impact of delaying the examination.

31 (2) A survivor retains such right to consult with and have present

1 an advocate at any time during any medical evidentiary or physical
2 examination, regardless of whether the survivor has previously waived
3 such right.

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

8 (4) A survivor has the right to shower at no cost after the medical
9 evidentiary or physical examination, unless showering facilities are not
10 available.

11 (5) A survivor has the right to anonymous reporting as provided in
12 section 28-902.

13 Sec. 7. (1) A survivor has the right to consult with or have
14 present an advocate or a representative of a victim and witness
15 assistance center of the survivor's choosing during an interview or a
16 deposition by a peace officer, prosecutor, or defense attorney, unless no
17 advocate or representative can appear in a reasonably timely manner. The
18 peace officer, prosecutor, or defense attorney shall contact the advocate
19 or representative before beginning the interview or deposition, unless
20 declined by the survivor.

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

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

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

31 (5) A survivor has the right to have an attorney present during all

1 stages of any interview, deposition, investigation, or other interaction
2 with representatives from the legal or criminal justice systems within
3 this state. This subdivision does not create a new obligation by the
4 state or a political subdivision to appoint or pay for counsel. Treatment
5 of the survivor shall not be affected or altered in any way as a result
6 of the survivor's decision to exercise such right to counsel.

7 (6) The right to have an advocate, representative, or attorney
8 present shall not apply during a forensic interview, as defined in
9 section 28-728, of a child victim.

10 Sec. 8. (1) A survivor has the right to prompt analysis of sexual
11 assault forensic evidence.

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

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

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

25 (5) A survivor has the right to have the results of the analysis of
26 the survivor's sexual assault forensic evidence uploaded to the
27 appropriate local, state, and federal DNA data bases.

28 (6) A survivor has the right to be informed, upon the survivor's
29 request, of the results of analysis of the survivor's sexual assault
30 forensic evidence, whether the analysis yielded a DNA profile, and
31 whether the analysis yielded a DNA match, either to the named perpetrator

1 or to a suspect already in the Federal Bureau of Investigation's Combined
2 DNA Index System.

3 (7) A survivor has the right to request a free and complete copy of
4 all law enforcement reports concerning the sexual assault upon the
5 conclusion of the case. At the discretion of the county attorney, such
6 reports may be redacted to exclude personal identifying information of
7 other witnesses.

8 Sec. 9. Sexual assault forensic evidence from a survivor shall not
9 be used:

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

12 (2) As a basis to search for further evidence of any misdemeanor
13 crime or any crime under the Uniform Controlled Substance Act that may
14 have been committed by the survivor.

15 Sec. 10. In any civil or criminal proceeding relating to a sexual
16 assault:

17 (1) A survivor has the right to be reasonably protected from the
18 defendant and persons acting on behalf of the defendant;

19 (2) A survivor has the right to be free from intimidation,
20 harassment, and abuse. A court shall make reasonable efforts to provide
21 the survivor and the survivor's family members, friends, and witnesses
22 with a secure waiting area or room that is separate from the waiting area
23 used by the defendant and the defendant's family members, friends,
24 witnesses, and attorneys; and

25 (3) A survivor has the right to be heard through a victim impact
26 statement at sentencing or any other proceeding where a right of the
27 survivor is at issue.

28 Sec. 11. (1) Law enforcement agencies and their officers and
29 employees shall only disclose the name or identifying information of a
30 survivor to advocates, health care providers, or any other person
31 necessary to carry out the prosecution of a crime or to carry out the

1 rights provided in the Sexual Assault Survivors' Bill of Rights Act. The
2 name or identifying information of a survivor is not a public record and
3 may be withheld from the public pursuant to subdivision (5) of section
4 84-712.05.

5 (2) This section does not apply if disclosure of the survivor's name
6 or other identifying information is required by the Constitution of
7 Nebraska or the Constitution of the United States or by other state or
8 federal law.

9 Sec. 12. (1) Upon an initial interaction with a survivor relating
10 to or arising from a sexual assault of such survivor, a health care
11 provider or peace officer, and in the case of a minor child, the
12 Department of Health and Human Services, shall provide the survivor with
13 information that explains the rights of survivors under the Sexual
14 Assault Survivors' Bill of Rights Act and other relevant law. The
15 information shall be presented in clear language that is comprehensible
16 to a person proficient in English at the fifth grade level, accessible to
17 persons with visual disabilities, and available in all major languages
18 spoken in this state. This information shall include, but not be limited
19 to:

20 (a) A clear statement that a survivor is not required to participate
21 in the criminal justice system or to receive a medical evidentiary or
22 physical examination in order to retain the rights provided by the act
23 and other relevant law;

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

27 (c) Forms of state and federal relief available to victims of crime;

28 (d) Forms of law enforcement protection available to the survivor,
29 including domestic violence protection orders, harassment protection
30 orders, and sexual assault protection orders and the process to obtain
31 such protection;

1 (e) Instructions for requesting information regarding the survivor's
2 sexual assault forensic evidence as provided in section 8 of this act;
3 and

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

8 (2) The information to be provided under subsection (1) of this
9 section shall be developed by the Attorney General and the Nebraska
10 Commission on Law Enforcement and Criminal Justice with input from
11 survivors of sexual assault and any organizations with a statewide
12 presence with expertise on domestic violence, sexual assault, and child
13 sexual assault.

14 (3) The information to be provided under subsection (1) of this
15 section shall be made available for viewing and download on the web sites
16 of the Department of Health and Human Services and the Nebraska
17 Commission on Law Enforcement and Criminal Justice. Other relevant state
18 agencies are also encouraged to make such information available on their
19 web sites.