By:  Meza H.B. No. 2889

A BILL TO BE ENTITLED

AN ACT

relating to amending the Texas Rules of Evidence to provide protections for victims of sexual assault.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  The Texas Rules of Evidence Article IV is amended to read as follows:

Rule 412. Evidence of Previous Sexual Conduct in Criminal Cases

(a)  ~~In General.~~ Prohibited Uses. The following evidence is not admissible in a ~~prosecution for sexual assault, aggravated sexual assault, or attempt to commit sexual assault or aggravated sexual assault:~~ civil or criminal proceeding involving alleged sexual misconduct:

(1)  ~~reputation or opinion evidence of a victim's past~~ evidence offered to prove that a victim engaged in other sexual behavior; or

(2)  ~~specific instances of~~ evidence offered to prove a victim's ~~past~~ sexual ~~behavior~~ predisposition.

(b)  Exceptions ~~for Specific Instances. Evidence of specific instances of a victim's past sexual behavior is admissible if:~~

(1)  ~~the court admits the evidence in accordance with subdivisions (c) and (d); (1)~~ Criminal Cases. The court may admit the following evidence in a criminal case:

(A)  evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B)  evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C)  evidence whose exclusion would violate the defendant's constitutional rights.

(2)  ~~the evidence:~~ Civil Cases. In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

~~(A)  is necessary to rebut or explain scientific or medical evidence offered by the prosecutor;~~

~~(B)  concerns past sexual behavior with the defendant and is offered by the defendant to prove consent;~~

~~(C)  relates to the victim's motive or bias;~~

~~(D)  is admissible under Rule 609; or~~

~~(E)  is constitutionally required to be admitted; and~~

~~(3)  the probative value of the evidence outweighs the danger of unfair prejudice.~~

(c)  Procedure ~~for Offering Evidence. Before offering any evidence of the victim's past sexual behavior, the defendant must inform the court outside the jury's presence. The court must then conduct an in camera hearing, recorded by a court reporter, and determine whether the proposed evidence is admissible. The defendant may not refer to any evidence ruled inadmissible without first requesting and gaining the court's approval outside the jury's presence.~~ To Determine Admissibility

(1)  Motion. If a party intends to offer evidence under Rule 412(b), the party must:

(A)  file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B)  do so at least 14 days before trial unless the court, for good cause, sets a different time;

(C)  serve the motion on all parties; and

(D)  notify the victim or, when appropriate, the victim's guardian or representative.

(2)  Hearing. Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.

(d)  ~~Record Sealed. The court must preserve the record of the in camera hearing, under seal, as part of the record.~~

~~(e)~~ (d)  Definition of "Victim." In this rule, "victim" includes an alleged victim.

SECTION 2.  The Texas Rules of Evidence Article IV is amended to add:

Rule 413. Similar Crimes in Sexual-Assault Cases

(a)  Permitted Uses. In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.

(b)  Disclosure to the Defendant. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c)  Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.

(d)  Definition of "Sexual Assault." In this rule and Rule 414, "sexual assault" means a crime under Texas law involving:

(1)  any conduct prohibited by section 22.011 of the Texas Penal Code;

(2)  contact, without consent, between any part of the defendant's body - or an object - and another person's genitals or anus;

(3)  contact, without consent, between the defendant's genitals or anus and any part of another person's body;

(4)  deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or

(5)  an attempt or conspiracy to engage in conduct described in subparagraphs (1)-(4).

SECTION 3.  The Texas Rules of Evidence Article IV is amended to add:

Rule 414 Civil Cases Involving Sexual Assault

(a)  Permitted Uses. In a civil case involving a claim for relief based on a party's alleged sexual assault, the court may admit evidence that the party committed any other sexual assault. The evidence may be considered as provided in Rules 413.

(b)  Disclosure to the Opponent. If a party intends to offer this evidence, the party must disclose it to the party against whom it will be offered, including witnesses' statements or a summary of the expected testimony. The party must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c)  Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.

SECTION 4.  This Act takes effect September 1, 2019.