

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:

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

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

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

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

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

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

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

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

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

25 ~~and~~

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

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

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

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

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

15 (C) serve the motion on all parties; and

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

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

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

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

27 SECTION 2. The Texas Rules of Evidence Article IV is amended

1 to add:

2 Rule 413. Similar Crimes in Sexual-Assault Cases

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

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

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

15 (d) Definition of "Sexual Assault." In this rule and Rule
16 414, "sexual assault" means a crime under Texas law involving:

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

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

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

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

27 (5) an attempt or conspiracy to engage in conduct

1 described in subparagraphs (1)-(4).

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

4 Rule 414 Civil Cases Involving Sexual Assault

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

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

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

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