

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB39

Hearing Date: Thursday March 19, 2009
Committee On: Judiciary
Introducer: Flood
One Liner: Adopt new rules of evidence relating to sexual offenses

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Ashford, Christensen, Coash, Council, Lathrop, Lautenbaugh, McGill, Rogert
Nay:
Absent:
Present Not Voting:

Proponents:

Matt Boever
Brenda Beadle
Richard Mangrum
Don Kleine

Representing:

Introducer
County Attorney Association
Creighton School of Law
Douglas County Attorney

Opponents:

James Mowbray
Robert Creager

Robert Hays

Representing:

Commission on Public Advocacy
NCDAA (Nebraska Criminal Defense Attorneys Association)
Lancaster County Public Defender

Neutral:

Shawn Renner

Representing:

Media of Nebraska, Inc.

Summary of purpose and/or changes:

LB 39 would create new rules of evidence as well as amend existing sections of Nebraska Statutes. A section by section breakdown of LB 39 is as follows:

Section 1. Would implement Federal Rule of Evidence 412 (Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition), in place of the current "rape shield law," found in section 28-321 of Nebraska Statutes.

Section 2. Would implement Federal Rule of Evidence 413 (Evidence of Similar Crimes in Sexual Assault Cases) applies in criminal cases and 414 (Evidence of Similar Crimes in Child Molestation Cases) applies in child sex abuse cases;

Section 3. Would implement Federal Rule of Evidence 415 (Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation). Rules 413-415 expand the admission of evidence of an accused person's other sexual misconduct or sex offenses.

Section 4. Harmonizes provisions in Neb. Rev. Stat. Sec. 27-404 and incorporates the applicable federal evidentiary threshold.

Section 5. Adds two new categories of non-hearsay statements to Neb. Rev. Stat. Sec. 27-801: (1) pretrial identification testimony, similar to Federal Rule of Evidence 801, and, in certain circumstances, (2) statements made by a child who is an alleged victim of child abuse.

Sections 6-9. Harmonizes changes throughout this act.

Section 10. Provides that section 1-3 of this act shall be assigned to the Nebraska Evidence Rules.

Section 11. Provides that the operative date for this act is Jan 1, 2010.

Section 12. General Repealer.

Section 13. Provides specific repealer for 28-321.

Explanation of amendments:

AM 932 would make the following changes to LB 39:

1. On page 2 and 3 strike the word "alleged" when the word appears before the word "victim" on lines 5, 7, 12, 16, 22, and 25 of page 2 and lines 2 & 10 of page 3 of the green copy of the bill.
2. On page 3, line 5 change "fourteen" to "fifteen" to make consistent with the "fifteen" days allowed under section 3, subsection 2, located on page 4 of the green copy of the bill.
3. On page 3, lines 2-3 and page 4, lines 3-4, strike, "sufficient evidence to support a finding by the jury" and replace it with, "clear and convincing evidence otherwise admissible under these rules." This change requires a higher burden of proof be met before evidence of a prior bad act can be admitted into evidence.
4. AM 932 strikes on page 3 of the green copy beginning with the word "The" in line 14 through line 16. This change would do away with the statutory requirement that this information automatically be sealed and remain sealed unless the court orders otherwise.
5. On Page 3 and 4, insert new subsection (3) on both pages, which requires that, before admitting evidence of a party's commission of another offense or offenses of sexual assault under this rule, the court must conduct a hearing outside the presence of the jury, and afford the victim and parties a right to attend the hearing and be heard. The rules of evidence shall apply at the hearing and the court shall apply a 27-403 balancing test and admit the evidence unless the risk of prejudice substantially outweighs the probative value of the evidence.
6. Finally, AM 932, would strike the newly added exemptions from hearsay found on page 8, line 8-9 and 18-22 of the green copy of the bill.

Brad Ashford, Chairperson