

**PROPOSED REVISIONS TO THE RULES OF EVIDENCE
PROPOSAL 2025-032**

June 5, 2025

The Rules of Evidence Committee has recommended adoption of new Rule 11-414 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before July 5, 2025, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

[NEW MATERIAL]

11-414. Evidence of gender or sexual orientation; testimony; limitations; in camera hearing.

A. **Prohibited uses.** The following evidence is not admissible in a criminal or civil proceeding:

(1) evidence of a victim or witness's perceived or actual gender, gender expression, gender identity, or sexual orientation, as a defense, justification or excuse in a criminal or civil proceeding that the defendant's conduct was a reaction to the discovery of, knowledge about or potential disclosure of that information; or

(2) evidence that a defendant was romantically propositioned in a nonviolent or non-threatening manner by a person of the same gender or a person who is transgender so that it may be used as a defense, justification, or excuse for the defendant's conduct.

B. **Exceptions.** The court may admit evidence of a victim or witness's perceived or actual gender, gender expression, gender identity, or sexual orientation for other purposes that are material and relevant to the case when the inflammatory or prejudicial nature does not outweigh its probative value.

C. **Procedure to determine admissibility.**

(1) **Motion.** If the defendant intends to offer evidence under Rule 11-414(B) NMRA, the defendant must file a written motion before trial. If the defendant discovers new information during trial, the defendant shall immediately bring the information to the attention of the court outside the presence of the jury.

(2) **Hearing.** Before admitting evidence under this rule, the court shall conduct an in camera hearing to determine whether such evidence is admissible.

(3) **Order.** If the court determines that the proposed evidence is admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted. Unless the court orders otherwise, the motion, order, related materials, and the record of the hearing must remain sealed.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee Commentary. — This rule applies to criminal and civil proceedings. This rule provides evidentiary context for the Legislature’s statement on substantive criminal law that (1) it is not a defense, justification or excuse, in a criminal proceeding, that the defendant’s conduct was in reaction to the discovery of, knowledge about, or potential disclosure of a victim or witness’s actual or perceived gender, gender expression, gender identity or sexual orientation and (2) It is not a defense, justification or excuse, in a criminal proceeding, that the defendant was romantically propositioned in a nonviolent or nonthreatening manner by a person of the same gender or a person who is transgender. *See* NMSA 1978, § 30-1-16 (2022).

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

**New Mexico
Courts**

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Fri, Jun 6, 2025 at 8:17 AM

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Proposal Number	2025-032
Comment	I completely support the adoption of this rule. Gender, or perceived gender, is no excuse for violence. Thank you.

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Proposal Number 2025-032

Comment

I completely support the adoption of this rule. Gender, or perceived gender, is no excuse for violence. Thank you.

**New Mexico
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Mon, Jun 16, 2025 at 12:47 PM

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**Proposal
Number** 2025-032

Comment The proposal regarding the proposed new Rule 11-411 NMRA ("Evidence of gender or sexual orientation; testimony; limitations; in camera hearing."), especially as applied to civil employment and medical malpractice or personal injury cases, is concerning and I hope the rule is rejected.

Employment cases and many medical malpractice cases have issues directly implicated by this rule and it poses an undue burden on defendants. The proposed rule imposes burdens on any defendant in, for example, employment discrimination cases where the plaintiff alleges discrimination on the basis of gender or sexual orientation. It forbids a defendant from introducing evidence about a plaintiff's gender or sexual orientation even where that subject is directly at issue in a plaintiff's lawsuit, until the defendant files a motion and obtains a ruling from the court permitting them to introduce such evidence. Even after spending the resources to file the motion, it could be denied and employment defendant would be hamstrung without a defense to a sexual discrimination case. Likewise, this rule could be applied to prevent medical evidence concerning a specific gender, such as in birth injury cases. New Mexico's economy and healthcare system is struggling and this rule is another burden on those systems. The normal constraints of a jury trial adequately protect misuse of evidence of gender and identity and the rights of defendants should not be disproportionately burdened.
