

1 **11-414. Evidence of gender or sexual orientation; testimony; limitations; in camera hearing.**

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

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

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

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

15 C. **Procedure to determine admissibility.**

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

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

22 (3) **Order.** If the court determines that the proposed evidence is admissible, the
23 court shall issue a written order stating what evidence may be introduced by the defendant and

1 stating the specific questions to be permitted. Unless the court orders otherwise, the motion, order,
2 related materials, and the record of the hearing must remain sealed.

3 [Adopted by Supreme Court Order No. S-1-RCR-2025-00169, effective for all cases pending or
4 filed on or after December 31, 2025.]

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

13 [Adopted by Supreme Court Order No. S-1-RCR-2025-00169.]