Public Law 95-540
95th Congress

An Act

Oct. 28, 1978
[H.R. 4727]

To amend the Federal Rules of Evidence to provide for the protection of the privacy of rape victims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Protection for Rape Victims Act of 1978".

Privacy Protection for Rape Victims Act of 1978.
28 USC app.

SEC. 2. (a) Article IV of the Federal Rules of Evidence is amended by adding at the end thereof the following new rule:

28 USC app.

"RULE 412. RAPE CASES; RELEVANCE OF VICTIM'S PAST BEHAVIOR

"(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behavior of an alleged victim of such rape or assault is not admissible.

"(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is—

"(1) admitted in accordance with subdivisions (c)(1) and (c)(2) and is constitutionally required to be admitted; or

"(2) admitted in accordance with subdivision (c) and is evidence of—

"(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

"(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which rape or assault is alleged.

"(c)(1) If the person accused of committing rape or assault with intent to commit rape intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

Hearing.

"(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision (b), the court shall order a hearing in chambers to determine if such evidence is admissible.

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At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue. 28 USC app.

"(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

"(d) For purposes of this rule, the term 'past sexual behavior' means sexual behavior other than the sexual behavior with respect to which rape or assault with intent to commit rape is alleged.". "Past sexual behavior."

(b) The table of contents for the Federal Rules of Evidence is amended by inserting immediately after the item relating to rule 411 the following new item:

"Rule 412. Rape cases; relevance of victim's past behavior.".

SEC. 3. The amendments made by this Act shall apply to trials which begin more than thirty days after the date of the enactment of this Act. Effective date. 28 USC app.

Approved October 28, 1978.

LEGISLATIVE HISTORY:

CONGRESSIONAL RECORD, Vol. 124 (1978):
Oct. 10, considered and passed House.
Oct. 12, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 44:
Oct. 30, Presidential statement.