
AMENDMENTS TO FEDERAL RULES OF EVIDENCE

The following amendments to the Federal Rules of Evidence were prescribed by the Supreme Court of the United States on April 29, 1994, pursuant to 28 U.S.C. §2072, and were reported to Congress by THE CHIEF JUSTICE on the same date. For the letter of transmittal, see *post*, p. 1188. The Judicial Conference report referred to in that letter is not reproduced herein.

Note that under 28 U.S.C. §2074, such amendments shall take effect no earlier than December 1 of the year in which they are transmitted to Congress unless otherwise provided by law.

For earlier reference to the Federal Rules of Evidence, see 409 U.S. 1132. For earlier publication of the Federal Rules of Evidence, and amendments thereto, see 441 U.S. 1005, 480 U.S. 1023, 485 U.S. 1049, 493 U.S. 1173, 500 U.S. 1001, and 507 U.S. 1187.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

APRIL 29, 1994

*To the Senate and House of Representatives of the United
States of America in Congress Assembled:*

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress an amendment to the Federal Rules of Evidence that has been adopted by the Supreme Court pursuant to Section 2072 of Title 28, United States Code. The Court has withheld that portion of the proposed amendment to Rule of Evidence 412 transmitted to the Supreme Court by the Judicial Conference of the United States which would apply that Rule to civil cases. The reasons for the Court's action are set forth in the attached letter to Judge Gerry, Chairman of the Executive Committee of the Judicial Conference of the United States.

Accompanying this rule are excerpts from the report of the Judicial Conference of the United States containing the Advisory Committee Note submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code. The Note was not revised to account for the Court's action, because the Note is the commentary of the advisory committee.

Sincerely,

(Signed) WILLIAM H. REHNQUIST
Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

APRIL 29, 1994

ORDERED:

1. That the Federal Rules of Evidence for the United States District Courts be, and they hereby are, amended by including therein an amendment to Evidence Rule 412.

[See *infra*, pp. 1191–1192.]

2. That the foregoing amendment to the Federal Rules of Evidence shall take effect on December 1, 1994, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Evidence in accordance with the provisions of Section 2072 of Title 28, United States Code.

AMENDMENT TO THE FEDERAL RULES
OF EVIDENCE

Rule 412. Admissibility of alleged victim's sexual behavior or alleged sexual predisposition.

(a) *Evidence generally inadmissible.*—The following evidence is not admissible in any criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):

- (1) evidence offered to prove that any alleged victim engaged in other sexual behavior; and
- (2) evidence offered to prove any alleged victim's sexual predisposition.

(b) *Exceptions.*—In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:

- (1) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;
- (2) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and
- (3) evidence the exclusion of which would violate the constitutional rights of the defendant.

(c) *Procedure to determine admissibility.*

(1) A party intending to offer evidence under subdivision (b) must:

- (A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court,

for good cause requires a different time for filing or permits filing during trial; and

(B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.