

SUPREME COURT OF THE UNITED STATES

Friday, 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. ____ ____ ____.]

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.

PROPOSED AMENDMENTS 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

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(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

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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.