

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS55390-LH-178* (3/8)

Short Title: Strengthen Rape Shield Law.

(Public)

Sponsors: Senator Hartsell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULE OF EVIDENCE REGARDING ADMISSIBILITY
OF A VICTIM'S PAST BEHAVIOR IN A TRIAL FOR RAPE OR OTHER SEX
OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8C-412(d) reads as rewritten:

"(d) Notwithstanding any other provision of law, unless and until the court determines that evidence of sexual behavior is relevant under subdivision (b), no reference to this behavior may be made in the presence of the jury and no evidence of this behavior may be introduced at any time during the trial of:

(1) A charge of rape or a lesser included offense of rape;

(2) A charge of a sex offense or a lesser included offense of a sex offense;

or

(3) An offense being tried jointly with a charge of rape or a sex offense, or with a lesser included offense of rape or a sex offense.

Before any questions pertaining to such evidence are asked of any witness, the proponent of such evidence shall first apply to the court for a determination of the relevance of the sexual behavior to which it relates. ~~The proponent of such evidence may make application either prior to trial pursuant to G.S. 15A-952, or during the trial at the time when the proponent desires to introduce such evidence. The proponent of the evidence shall 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.~~ When application is made, the court shall conduct an in camera hearing, which shall be transcribed, to consider the proponent's offer of proof and the argument of counsel, including any counsel for the complainant, to determine the extent to which such behavior is relevant. In the hearing, the proponent of the evidence shall establish the basis of admissibility of

1 such evidence. Notwithstanding subdivision (b) of Rule 104, if the relevancy of the
2 evidence which the proponent seeks to offer in the trial depends upon the fulfillment of
3 a condition of fact, the court, at the in camera hearing or at a subsequent in camera
4 hearing scheduled for that purpose, shall accept evidence on the issue of whether that
5 condition of fact is fulfilled and shall determine that issue. If the court finds that the
6 evidence is relevant, it shall enter an order stating that the evidence may be admitted
7 and the nature of the questions which will be permitted."

8 **SECTION 2.** This act becomes effective December 1, 2007, and applies to
9 trials beginning on or after that date.