

**Rule 412 Rape and similar cases -- Admissibility of victim's character and behavior**

- (a) Evidence generally inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (b) and (c):
  - (1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.
  - (2) Evidence offered to prove any alleged victim's sexual predisposition.
- (b) Exceptions:
  - (1) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:
    - (A) 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;
    - (B) 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
    - (C) any other evidence directly pertaining to the offense charged.
  - (2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.
- (c) Procedure to determine admissibility.
  - (1) A party intending to offer evidence under subdivision (b) must:
    - (A) file a written motion at least fourteen (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.

**Effective:** July 1, 2003

**History:** Enacted 1990 Ky. Acts ch. 88, sec. 22; amended 1992 Ky. Acts ch. 324, sec. 29; renumbered (7/1/92) pursuant to 1992 Ky. Acts ch. 324, sec. 34; amended by Supreme Court Order 2003-3, effective July 1, 2003.