

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE ADOPTION)
OF A NEW RULE RELATING TO) RULE 10-13
FEDERAL RULES OF EVIDENCE 412)

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A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the adoption of a new rule relating to the adoption of Federal Rules of Evidence 412 concerning the relevance of past sexual behavior of an alleged victim in sex offense cases (Federal Rape Shield Law), and the Court having considered the proposed adoption and correspondence relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to the adoption of Federal Rules of Evidence 412 concerning the relevance of past sexual behavior of an alleged victim in sex offense cases (Federal Rape Shield Law), be and it is hereby adopted to read in its entirety as follows:

SDCL 19-12-____ (Rule 412) Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition.

(a) Evidence generally inadmissible. The following evidence is not admissible in any civil or 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.

(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) evidence the exclusion of which would violate the constitutional rights of the defendant.

(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 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.

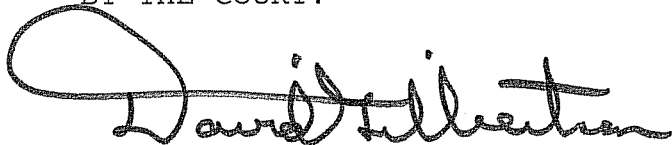
(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

Section 2. The adoption of this rule shall only become effective upon the legislative repeal of SDCL 23A-22-15 and SDCL 23A-22-15.1.

IT IS FURTHER ORDERED that the rule shall become effective July 1, 2012, upon the legislative repeal of SDCL 23A-22-15 and SDCL 23A-22-15.1.

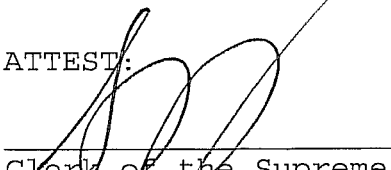
DATED at Pierre, South Dakota, this 15th day of March, 2011.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 15 2011


Clerk