

1 is amended by adding at the end thereof the following new  
2 rule:

3 "RULE 412.

4 "RAPE CASES; RELEVANCE OF VICTIM'S PAST CONDUCT

5 "Evidence of an individual's prior sexual conduct or  
6 reputation is not admissible in any action or proceeding if  
7 an issue in such action or proceeding is whether such indi-  
8 vidual was raped or assaulted with intent to commit rape.  
9 The preceding sentence shall not apply to evidence of such  
10 individual's prior sexual conduct with the individual who in  
11 such action or proceeding is alleged to have committed rape  
12 or assault with intent to commit rape. Hearings on the ad-  
13 missibility of evidence under this rule shall in all cases be  
14 conducted in chambers."

15 (b) The table of contents for the Federal Rules of Evi-  
16 dence is amended by inserting after the item relating to rule  
17 411 the following new item:

"Rule 412. Rape cases; relevance of victim's past conduct."

# H. R. 12685

## IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 1976

Ms. HOLTZMAN (for herself, Mr. RICHMOND, Mrs. SPELLMAN, Mr. MOFFETT, Mr. MOSS, Mr. UDALL, Mr. RANGEL, Mr. BADILLO, Mr. WIRTH, Ms. ABZUG, Mr. ROUSH, Mr. COUGHLIN, Mr. MAGUIRE, Mr. REES, Mr. D'AMICOUR, Mr. OTTINGER, Mr. WEAVER, Mr. FLOOD, Mr. EDWARDS of California, Mr. KOCH, Mr. FRASER, and Mr. MEZVINSKY) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To amend the Federal Rules of Evidence to permit fair and effective prosecution for rape by providing that evidence of an individual's prior sexual conduct is not admissible in any action or proceeding if an issue in such action or proceeding is whether such individual was raped or assaulted with intent to commit rape.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 *That this Act may be cited as "Privacy Protection for Rape*  
4 *Victims Act of 1976".*

5 SEC. 2. (a) Article IV of the Federal Rules of Evidence  
6 is amended by adding at the end thereof the following new  
7 rule:

I

## "RULE 412.

1 "RAPE CASES; RELEVANCE OF VICTIM'S PAST CONDUCT  
 2  
 3 "Evidence of an individual's prior sexual conduct or  
 4 reputation is not admissible in any action or proceeding if an  
 5 issue in such action or proceeding is whether such individ-  
 6 ual was raped or assaulted with intent to commit rape.  
 7 The preceding sentence shall not apply to evidence of such  
 8 individual's prior sexual conduct with the individual who in  
 9 such action or proceeding is alleged to have committed rape  
 10 or assault with intent to commit rape. Hearings on the ad-  
 11 missibility of evidence under this rule shall in all cases be  
 12 conducted in chambers."

13 (b) The table of contents for the Federal Rules of Evi-  
 14 dence is amended by inserting after the item relating to rule  
 15 411 the following new item:

"Rule 412. Rape cases; relevance of victim's past conduct."

**H. R. 12968**

## IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1976

Ms. HOLTZMAN (for herself and Mr. SOLARZ) introduced the following bill;  
 which was referred to the Committee on the Judiciary

**A BILL**

To amend the Federal Rules of Evidence to permit fair and effective prosecution for rape by providing that evidence of an individual's prior sexual conduct is not admissible in any action or proceeding if an issue in such action or proceeding is whether such individual was raped or assaulted with intent to commit rape.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*  
 3 That this Act may be cited as "Privacy Protection for Rape  
 4 Victims Act of 1976".

5 SEC. 2. (a) Article IV of the Federal Rules of Evidence  
 6 is amended by adding at the end thereof the following new  
 7 rule:

I

## "RULE 412.

1 "RAPE CASES; RELEVANCE OF VICTIM'S PAST CONDUCT

2 "Evidence of an individual's prior sexual conduct or  
3 reputation is not admissible in any action or proceeding if  
4 an issue in such action or proceeding is whether such indi-  
5 vidual was raped or assaulted with intent to commit rape.  
6 The preceding sentence shall not apply to evidence of such  
7 individual's prior sexual conduct with the individual who in  
8 such action or proceeding is alleged to have committed rape  
9 or assault with intent to commit rape. Hearings on the ad-  
10 missibility of evidence under this rule shall in all cases be  
11 conducted in chambers."

12 (b) The table of contents for the Federal Rules of Evi-  
13 dence is amended by inserting after the item relating to rule  
14 411 the following new item:

15 "Rule 412. Rape cases; relevance of victim's past conduct."

**H. R. 13481**

## IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 1976

Ms. HOLTZMAN (for herself, Mr. EDGAR, and Mr. DRINAN) introduced the following bill; which was referred to the Committee on the Judiciary

**A BILL**

To amend the Federal Rules of Evidence to permit fair and effective prosecution for rape by providing that evidence of an individual's prior sexual conduct is not admissible in any action or proceeding if an issue in such action or proceeding is whether such individual was raped or assaulted with intent to commit rape.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 *That this Act may be cited as "Privacy Protection for Rape*  
4 *Victims Act of 1976".*

5 SEC. 2. (a) Article IV of the Federal Rules of Evidence  
6 is amended by adding at the end thereof the following new  
7 rule:

I

## "RULE 412.

## "RAPE CASES; RELEVANCE OF VICTIM'S PAST CONDUCT

"Evidence of an individual's prior sexual conduct or reputation is not admissible in any action or proceeding if an issue in such action or proceeding is whether such individual was raped or assaulted with intent to commit rape. The preceding sentence shall not apply to evidence of such individual's prior sexual conduct with the individual who in such action or proceeding is alleged to have committed rape or assault with intent to commit rape. Hearings on the admissibility of evidence under this rule shall in all cases be conducted in chambers."

(b) The table of contents for the Federal Rules of Evidence is amended by inserting after the item relating to rule 411 the following new item:

"Rule 412. Rape cases; relevance of victim's past conduct."

**H. R. 15739**

## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29 (legislative day, SEPTEMBER 28), 1976

Ms. HOLTZMAN (for herself, Mr. RICHMOND, Mrs. SPELLMAN, Mr. MOFFETT, Mr. MOSS, Mr. UDALL, Mr. RANGEL, Mr. BADILLO, Mr. WITTEN, Ms. ABzug, Mr. ROUSH, Mr. MAGUIRE, Mr. REES, Mr. D'AMOURS, Mr. OTTINGER, Mr. WEAVER, Mr. FLOOD, Mr. EDWARDS of California, Mr. KOCH, Mr. FRASER, Mr. MEZVINSKY, Mr. SOLARZ, Mr. DRINAN, Mr. EDGAR, and Mr. STEELMAN) introduced the following bill; which was referred to the Committee on the Judiciary

**A BILL**

To amend the Federal Rules of Evidence to provide for the protection of the privacy of rape victims.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

That this Act may be cited as the "Privacy Protection for Rape Victims Act of 1976".

SEC. 2. (a) Article IV of the Federal Rules of Evidence is amended by adding at the end thereof the following new rule:

"RULE 412. RAPE CASES; RELEVANCE OF VICTIM'S PAST BEHAVIOR

"(a) Notwithstanding any other provision of law, reputation or opinion evidence of a person's past sexual behavior

1 is not admissible in any trial if an issue in such trial is whether  
2 such person was raped or assaulted with intent to commit  
3 rape.

4 “(b) Notwithstanding any other provision of law, evi-  
5 dence of specific instances of a person’s past sexual behavior  
6 is not admissible in any trial if an issue in such trial is whether  
7 such person was raped or assaulted with intent to commit  
8 rape, except that otherwise admissible evidence of specific  
9 instances of such conduct is admissible in such trial—

10 “(1) if such evidence—

11 “(A) is evidence of sexual behavior with per-  
12 sons other than the accused, offered by the accused  
13 upon the issue of whether the accused was or was  
14 not, with respect to the alleged victim, the source of  
15 pregnancy, disease, semen, or injury; or

16 “(B) is of past sexual behavior with the ac-  
17 cused and is offered by the accused upon the issue  
18 of whether the alleged victim consented to the sex-  
19 ual behavior with respect to which rape or assault is  
20 alleged; and

21 “(2) if the requirements contained in subsection  
22 (c) are satisfied.

23 “(c) (1) If the person accused of committing rape or  
24 assault with intent to commit rape intends to offer under  
25 subsection (b) evidence of specific instances of the alleged

1 victim’s past sexual behavior, the accused shall make a writ-  
2 ten motion to offer such evidence not later than fifteen days  
3 before the date on which the trial in which such evidence  
4 is to be offered is scheduled to begin, except that the court  
5 may allow the motion to be made at a later date, including  
6 during trial, if the court determines that the evidence is  
7 newly discovered and could not have been obtained earlier  
8 through the exercise of due diligence. Any motion made  
9 under this paragraph shall be served on all other parties and  
10 on the alleged victim if not a party.

11 “(2) The motion described in paragraph (1) shall be  
12 accompanied by a written offer of proof. If the court deter-  
13 mines that the offer of proof contains evidence described in  
14 subsection (b) (1), the court shall order a hearing in cham-  
15 bers to determine if such evidence is admissible. At such  
16 hearing the parties may call witnesses, including the alleged  
17 victim, and offer relevant evidence. Notwithstanding subsec-  
18 tion (b) of rule 104, if the relevancy of the evidence which  
19 the accused seeks to offer in the trial depends upon the ful-  
20 fillment of a condition of fact, the court, at the hearing in  
21 chambers or at a subsequent hearing in chambers scheduled  
22 for such purpose, shall accept evidence on the issue of  
23 whether such condition of fact is fulfilled and shall determine  
24 such issue.

1       “(3) If the court determines on the basis of the  
2 hearing described in paragraph (2) that the evidence  
3 which the accused seeks to offer is relevant and that the  
4 probative value of such evidence substantially outweighs  
5 the danger of unfair prejudice, such evidence shall be admis-  
6 sible in the trial to the extent an order made by the court  
7 specifies evidence which may be offered and areas with  
8 respect to which the alleged victim may be examined or  
9 cross-examined.

10       “(d) For purposes of this rule, the term ‘past sexual  
11 behavior’ means sexual behavior other than the sexual  
12 behavior with respect to which rape or assault with intent  
13 to commit rape is alleged.”.

14       “(b) The table of contents for the Federal Rules of  
15 Evidence is amended by inserting immediately after the  
16 item relating to rule 411 the following new item:

“Rule 412. Rape cases; relevance of victim’s past behavior.”.

17       SEC. 3. The amendments made by this Act shall apply  
18 to trials which begin more than thirty days after the date  
19 of enactment of this Act.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29 (legislative day, SEPTEMBER 28), 1970

Ms. HOLTZMAN (for herself, Mr. DAVIS, Mr. KEERS, Mr. FLORIO, Mr. HARRINGTON, Mr. WOLF PACE, Mr. NIX, Mr. STAMM, Mr. ROYBAL, Mr. VANDER VEEN, Mr. HECHLER of West Virginia, Mrs. CHISHOLM, Mr. MITCHELL of Maryland, Mr. PEYSER, Mr. ROSENTHAL, Mr. HARRIS, Mr. SCHFEER, Mr. MILLER of California, Mr. PICKLE, Mrs. MINK, Mr. FITHIAN, Mrs. FENWICK, Ms. KEYS, and Mr. FRENZEL) introduced the following bill; which was referred to the Committee on the Judiciary

---

**A BILL**

To amend the Federal Rules of Evidence to provide for the protection of the privacy of rape victims.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 *That this Act may be cited as the “Privacy Protection for*  
4 *Rape Victims Act of 1976”.*

5       SEC. 2. (a) Article IV of the Federal Rules of Evidence  
6 is amended by adding at the end thereof the following new  
7 rule:

1 "RULE 412. RAPE CASES; RELEVANCE OF VICTIM'S PAST  
2 BEHAVIOR

3 " (a) Notwithstanding any other provision of law, rep-  
4 utation or opinion evidence of a person's past sexual behavior  
5 is not admissible in any trial if an issue in such trial is whether  
6 such person was raped or assaulted with intent to commit  
7 rape.

8 " (b) Notwithstanding any other provision of law, evi-  
9 dence of specific instances of a person's past sexual behavior  
10 is not admissible in any trial if an issue in such trial is whether  
11 such person was raped or assaulted with intent to commit  
12 rape, except that otherwise admissible evidence of specific  
13 instances of such conduct is admissible in such trial—

14 " (1) if such evidence—

15 " (A) is evidence of sexual behavior with per-  
16 sons other than the accused, offered by the accused  
17 upon the issue of whether the accused was or was  
18 not, with respect to the alleged victim, the source of  
19 pregnancy, disease, semen, or injury; or

20 " (B) is of past sexual behavior with the ac-  
21 cused and is offered by the accused upon the issue  
22 of whether the alleged victim connected to the sex-  
23 ual behavior with respect to which rape or assault is  
24 alleged; and

1 " (2) if the requirements contained in subsection  
2 (c) are satisfied.

3 " (c) (1) If the person accused of committing rape or  
4 assault with intent to commit rape intends to offer under  
5 subsection (b) evidence of specific instances of the alleged  
6 victim's past sexual behavior, the accused shall make a writ-  
7 ten motion to offer such evidence not later than fifteen days  
8 before the date on which the trial in which such evidence  
9 is to be offered is scheduled to begin, except that the court  
10 may allow the motion to be made at a later date, including  
11 during trial, if the court determines that the evidence is  
12 newly discovered and could not have been obtained earlier  
13 through the exercise of due diligence. Any motion made  
14 under this paragraph shall be served on all other parties and  
15 on the alleged victim if not a party.

16 " (2) The motion described in paragraph (1) shall be  
17 accompanied by a written offer of proof. If the court deter-  
18 mines that the offer of proof contains evidence described in  
19 subsection (b) (1), the court shall order a hearing in cham-  
20 bers to determine if such evidence is admissible. At such  
21 hearing the parties may call witnesses, including the alleged  
22 victim, and offer relevant evidence. Notwithstanding subsec-  
23 tion (b) of rule 104, if the relevancy of the evidence which  
24 the accused seeks to offer in the trial depends upon the ful-

1 fulfillment of a condition of fact, the court, at the hearing in  
2 chambers or at a subsequent hearing in chambers scheduled  
3 for such purpose, shall accept evidence on the issue of  
4 whether such condition of fact is fulfilled and shall determine  
5 such issue.

6 “(3) If the court determines on the basis of the  
7 hearing described in paragraph (2) that the evidence  
8 which the accused seeks to offer is relevant and that the  
9 probative value of such evidence substantially outweighs  
10 the danger of unfair prejudice, such evidence shall be admis-  
11 sible in the trial to the extent an order made by the court  
12 specifies evidence which may be offered and areas with  
13 respect to which the alleged victim may be examined or  
14 cross-examined.

15 “(d) For purposes of this rule, the term ‘past sexual  
16 behavior’ means sexual behavior other than the sexual  
17 behavior with respect to which rape or assault with intent  
18 to commit rape is alleged.”.

19 (b) The table of contents for the Federal Rules of  
20 Evidence is amended by inserting immediately after the  
21 item relating to rule 411 the following new item:

“Rule 412. Rape cases; relevance of victim's past behavior.”.

22 SEC. 3. The amendments made by this Act shall apply  
23 to trials which begin more than thirty days after the date  
24 of enactment of this Act.

**END**