

LEGISLATIVE FACT SHEET

N.J.R.S. 2A:84A-32.1 - 32.3 on *Admissibility of evidence*  
in prosecutions for rape  
( Amendment )

LAWS OF 1976  
SENATE BILL 1134  
INTRODUCED Feb. 9, 1976

CHAPTER 71  
~~ASSEMBLY BILL~~  
BY *Dugan*

SPONSOR'S STATEMENT  
ASSEMBLY COMMITTEE STATEMENT  
SENATE COMMITTEE STATEMENT

YES  NO  
YES  NO  
 YES  NO *see other side*

FISCAL NOTE  
AMENDED DURING PASSAGE  
HEARING - *None discovered*

YES  NO  
 YES NO

VETO

*Amendment:*

Amend page 1, section 2, line 1, omit "a persuasive showing", insert "clear and convincing proof".

2. In the absence of **\*[a persuasive showing]\*** *clear and convincing proof* to the contrary, evidence of the complaining witness' sexual conduct occurring more than 1 year before the date of the offense charged is presumed to be inadmissible under this act.

*MS*  
JA/PC  
11/7/75

SENATE, No. 1134

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1976

By Senator DUGAN

Referred to Committee on Judiciary

AN ACT concerning the admissibility of evidence in prosecutions for rape and related offenses and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. In prosecutions for the crime of rape, assault with intent to  
2 commit rape, and breaking and entering with intent to commit rape,  
3 evidence of the complaining witness' previous sexual conduct shall  
4 not be admitted nor reference made to it in the presence of the  
5 jury except as provided in this act. When the defendant seeks  
6 to admit the evidence for any purpose, he may apply for an order  
7 of the court at any time before or during the trial or preliminary  
8 hearing. After the application is made, the court shall conduct  
9 a hearing in camera to determine the admissibility of the evidence.  
10 If the court finds that evidence offered by the defendant regarding  
11 the sexual conduct of the complaining witness is relevant, and  
12 that the probative value of the evidence offered is not outweighed  
13 by the probability that its admission will create undue prejudice,  
14 confusion of the issues, or unwarranted invasion of the privacy  
15 of the complaining witness, the court shall make an order stating  
16 what evidence may be introduced and the nature of the questions  
17 which shall be permitted. The defendant may then offer evidence  
18 under the order of the court.

1 2. In the absence of **\*[a persuasive showing]\*** *\*clear and con-*  
2 *vincing proof\** to the contrary, evidence of the complaining witness'  
3 sexual conduct occurring more than 1 year before the date of the  
4 offense charged is presumed to be inadmissible under this act.

1 3. As used in this act "complaining witness" means the alleged  
2 victim of the crime charged, the prosecution of which is subject  
3 to this act.

1 4. This act shall take effect immediately.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

SENATE, No. 1134

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1976

By Senator DUGAN

Referred to Committee on Judiciary

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1 BE IT ENACTED *by the Senate and General Assembly of the State*  
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18 under the order of the court.

1 2. In the absence of a persuasive showing to the contrary,  
2 evidence of the complaining witness' sexual conduct occurring more  
3 than 1 year before the date of the offense charged is presumed to  
4 be inadmissible under this act.

1 3. As used in this act "complaining witness" means the alleged  
2 victim of the crime charged, the prosecution of which is subject  
3 to this act.

1 4. This act shall take effect immediately.

SENATE COMMITTEE AMENDMENT TO

**SENATE, No. 1134**

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**STATE OF NEW JERSEY**

ADOPTED FEBRUARY 19, 1976

Amend page 1, section 2, line 1, omit "a persuasive showing", insert  
"clear and convincing proof".

SENATE JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 1134**

with Committee amendments

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**STATE OF NEW JERSEY**

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DATED: FEBRUARY 19, 1976

The bill provides that in prosecutions for the crime of rape, assault with intent to commit rape, and breaking and entering with intent to commit rape, the prior sexual conduct of the complaining witness is inadmissible, except that if the defendant seeks to admit such evidence, he must apply for an order of the court. After such application, the court conducts an in camera hearing, and, if it finds the evidence to be relevant, and that its probative value is not outweighed by the probability that its introduction will create undue prejudice confusion of the issues, or unwarranted invasion of privacy of the complaining witnesses, the court shall make an order that the evidence be introduced and also determining the nature of the questions which will be permitted.

The committee amended section 2 to include the wording "clear and convincing proof" in place of "persuasive showing" to reflect the language now prevalent in the statutes.

Section 2 of the bill provides that unless clear and convincing proof is made, evidence of the complaining witness' sexual conduct occurring more than 1 year before the date of the offense charged is presumed to be inadmissible.