

2C:14-7

LEGISLATIVE HISTORY CHECKLIST
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(Rape Shield--date)

NJSA: 2C:14-7

LAWS OF: 1994 CHAPTER: 95

BILL NO: A677

SPONSOR(S): Derman and others

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Judiciary; Law & Public Safety

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage
Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: January 27, 1994

SENATE: June 13, 1994

DATE OF APPROVAL: August 11, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Hearings, held by New Jersey Advisory Council on Women ~~not transcribed as of~~
~~10-1-94.~~

KBG:pp 974.9D NJ Legislature. Advisory Council on Women.
W872 Meeting . . . Assembly bill 677. . .
1994c [April 29, 1994, Edison NJ]

[SECOND REPRINT]

ASSEMBLY, No. 677

STATE OF NEW JERSEY

By Assemblywoman DERMAN,
Assemblyman WARSH, Assemblywoman Gill,
Assemblyman Jones, Assemblywomen Quigley,
Turner and Weinberg

1 AN ACT concerning the admissibility of certain evidence in
2 prosecutions for sex crimes and amending N.J.S.2C:14-7.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. N.J.S.2C:14-7 is amended to read as follows:

7 2C:14-7. a. In prosecutions for aggravated sexual assault,
8 sexual assault, aggravated criminal sexual contact, criminal
9 sexual contact, [or] endangering the welfare of a child in
10 violation of N.J.S.2C:24-4 or the fourth degree crime of lewdness
11 in violation of subsection b. of N.J.S.2C:14-4, evidence of the
12 victim's previous sexual conduct shall not be admitted nor
13 reference made to it in the presence of the jury except as
14 provided in this section. When the defendant seeks to admit such
15 evidence for any purpose, [he] the defendant must apply for an
16 order of the court before the trial or preliminary hearing, except
17 that the court may allow the motion to be made during trial if
18 the court determines that the evidence is newly discovered and
19 could not have been obtained earlier through the exercise of due
20 diligence. After the application is made, the court shall conduct
21 a hearing in camera to determine the admissibility of the
22 evidence. If the court finds that evidence offered by the
23 defendant regarding the sexual conduct of the victim is relevant
24 and highly material and meets the requirements of subsections c.
25 and d. of this section and that the probative value of the evidence
26 offered [is not outweighed by] substantially outweighs its
27 collateral nature or [by] the probability that its admission will
28 create undue prejudice, confusion of the issues, or unwarranted
29 invasion of the privacy of the victim, the court shall enter an
30 order setting forth with specificity what evidence may be
31 introduced and the nature of the questions which shall be
32 permitted, and the reasons why the court finds that such evidence
33 satisfies the standards contained in this section. The defendant
34 may then offer evidence under the order of the court.

35 b. In the absence of clear and convincing proof to the
36 contrary, evidence of the victim's sexual conduct occurring more
37 than one year before the date of the offense charged is presumed
38 to be inadmissible under this section.

39 c. Evidence of previous sexual conduct with persons other than
40 the defendant which is offered by any lay or expert witness shall
41 not be considered relevant unless it is material to [negating the
42 element of force or coercion or to] proving [that] the source of
43 semen, pregnancy or disease [is a person other than the
44 defendant].

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJL committee amendments adopted January 20, 1994.

² Senate SJU committee amendments adopted June 2, 1994.

1 d. ²[Evidence of the defendant's previous sexual conduct with
2 the victim shall be relevant only if the previous sexual conduct
3 with the victim could lead the defendant to reasonably believe
4 that the sexual conduct complained of occurred with what a
5 reasonable person would believe to be affirmative and freely
6 given permission] Evidence of the victim's previous sexual
7 conduct with the defendant shall be considered relevant if it is
8 probative of whether a reasonable person, knowing what the
9 defendant knew at the time of the alleged offense, would have
10 believed that the alleged victim freely and affirmatively
11 permitted the sexual behavior complained of².

12 e. For the purposes of this section, "sexual conduct" shall
13 mean any conduct or behavior relating to sexual activities of the
14 victim, including but not limited to previous or subsequent
15 experience of sexual penetration or sexual contact, use of
16 contraceptives, ¹sexual activities reflected in¹ gynecological
17 records, living arrangement and life style.

18 (cf: P.L.1988, c.69, s.1)

19 2. This act shall take effect immediately.

20

21

22

23

24 Amends the "Rape Shield Law" to exclude certain evidence
25 concerning the victim's past sexual conduct.

1 the element of force or coercion or to) proving [that] the source
2 of semen, pregnancy or disease (is a person other than the
3 defendant).

4 d. Evidence of the defendant's previous sexual conduct with
5 the victim shall be relevant only if the previous sexual conduct
6 with the victim could lead the defendant to reasonably believe
7 that the sexual conduct complained of occurred with what a
8 reasonable person would believe to be affirmative and freely
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11 mean any conduct or behavior relating to sexual activities of the
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15 life style.

16 (cf: P.L.1988, c.69, s.1)

17 2. This act shall take effect immediately.

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20 STATEMENT

21

22 This bill would amend the "Rape Shield Law," N.J.S.2C:14-7,
23 to strengthen the privacy protections granted to sex crime
24 victims.

25 Although the "Rape Shield Law" currently places restrictions
26 on a defendant's ability to introduce evidence of the rape
27 victim's past sexual conduct, these restrictions fall short of
28 protecting the victim's right to privacy. The inadequacy of the
29 current Rape Shield provisions was borne out by events at the
30 recent Glen Ridge sexual assault trial, in which the defendants
31 were allowed to bring in evidence of the developmentally disabled
32 victim's past history and discuss it, in great detail, in open court.

33 It is vitally important to assure rape victims that they will not
34 themselves be put on trial if they press charges against their
35 attackers. This bill is intended to strike an appropriate balance
36 between protecting a defendant's constitutional rights, and
37 protecting a rape victim from an assault upon the victim's
38 character. It is in the public interest to protect the privacy of
39 the victim, as opposed to allowing the defendant to freely
40 examine the victim's past when the examination serves no
41 material or relevant evidentiary or constitutional purpose.

42 The bill would provide that evidence of the victim's previous
43 sexual conduct with persons other than the defendant would not
44 be admissible unless it is material to proving the source of semen,
45 pregnancy, or disease. Currently, evidence of the victim's
46 previous sexual conduct is admissible if it is material to
47 "negating the element of force or coercion." Thus, under current
48 law, a defendant may bring in evidence of a victim's past sexual
49 conduct with another person in an attempt to show that the
50 victim consented to the defendant's own sexual conduct.

51 The bill tightens the standard by which the court may, in its
52 discretion, admit some evidence of the victim's past conduct.
53 Currently, the evidence may be allowed if the court finds it
54 relevant and finds that its probative value is not

1 outweighed by its collateral nature or the probability that the
2 evidence will create undue prejudice, confusion of the issues, or
3 unwarranted invasion of the privacy of the victim. Under this
4 bill, the court would be required to find that the evidence is
5 highly material, in addition to being relevant, and that its
6 probative value substantially outweighs its collateral nature or
7 the probability for prejudice, confusion, or invasion of privacy.

8 The bill also provides that evidence of the defendant's previous
9 sexual conduct with the victim would be relevant only if the
10 previous sexual conduct with the victim could lead the defendant
11 to reasonably believe that the sexual conduct complained of
12 occurred with what a reasonable person would believe to be
13 affirmative and freely given permission. This language is
14 modeled on that used by the New Jersey Supreme Court in State
15 in Interest of M.T.S., 129 N.J. 422 (1992), where the Court held
16 that a person is guilty of sexual assault if the person commits an
17 act of sexual penetration "in the absence of what a reasonable
18 person would believe to be affirmative and freely-given
19 permission to the act."

20 In addition, the bill provides that the Rape Shield statute is
21 applicable when a defendant is charged with the fourth degree
22 crime of lewdness committed in the presence of a child under the
23 age of 13 or in the presence of a mentally disabled person.

24 Finally, the bill provides that a victim's gynecological records
25 are excludable under the Rape Shield statute.

26

27

28 Amends the "Rape Shield Law" to exclude certain evidence
29 concerning the victim's past sexual conduct.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 677

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 20, 1994

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 677.

This bill would amend the "Rape Shield Law," N.J.S.2C:14-7, to strengthen the privacy protections granted to sex crime victims.

Although the "Rape Shield Law" currently places restrictions on a defendant's ability to introduce evidence of the rape victim's past sexual conduct, these restrictions fall short of protecting the victim's right to privacy. The inadequacy of the current Rape Shield provisions was borne out by events at the recent Glen Ridge sexual assault trial, in which the defendants were allowed to bring in evidence of the developmentally disabled victim's past history and discuss it, in great detail, in open court.

It is vitally important to assure rape victims that they will not themselves be put on trial if they press charges against their attackers. This bill is intended to strike an appropriate balance between protecting a defendant's constitutional rights, and protecting a rape victim from an assault upon the victim's character. It is in the public interest to protect the privacy of the victim, as opposed to allowing the defendant to freely examine the victim's past when the examination serves no material or relevant evidentiary or constitutional purpose.

The bill would provide that evidence of the victim's previous sexual conduct with persons other than the defendant would not be admissible unless it is material to proving the source of semen, pregnancy, or disease. Currently, evidence of the victim's previous sexual conduct is admissible if it is material to "negating the element of force or coercion." Thus, under current law, a defendant may bring in evidence of a victim's past sexual conduct with another person in an attempt to show that the victim consented to the defendant's own sexual conduct.

The bill tightens the standard by which the court may, in its discretion, admit some evidence of the victim's past conduct. Currently, the evidence may be allowed if the court finds it relevant and finds that its probative value is not outweighed by its collateral nature or the probability that the evidence will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim. Under this bill, the court would be required to find that the evidence is highly material, in addition to being relevant, and that its probative value substantially outweighs its collateral nature or the probability for prejudice, confusion, or invasion of privacy.

The bill also provides that evidence of the defendant's previous sexual conduct with the victim would be relevant only if the previous sexual conduct with the victim could lead the defendant to reasonably believe that the sexual conduct complained of occurred with what a reasonable person would believe to be affirmative and freely given permission. This language is modeled on that used by the New Jersey Supreme Court in State in Interest of M.T.S., 129 N.J. 422 (1992), where the Court held that a person is guilty of sexual assault if the person commits an act of sexual penetration "in the absence of what a reasonable person would believe to be affirmative and freely-given permission to the act."

In addition, the bill provides that the Rape Shield statute is applicable when a defendant is charged with the fourth degree crime of lewdness committed in the presence of a child under the age of 13 or in the presence of a mentally disabled person.

Finally, the bill provides that a victim's gynecological records are excludable under the Rape Shield statute.

This bill was prefiled for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 677

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 2, 1994

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 677 (1R).

This bill would amend the "Rape Shield Law," N.J.S. 2C:14-7, to strengthen the privacy protections granted to sex crime victims. These bills would provide that evidence of the victim's previous sexual conduct with persons other than the defendant would not be admissible unless it is material to proving the source of semen, pregnancy, or disease. Currently, evidence of the victim's previous sexual conduct is admissible if it is material to "negating the element of force or coercion." Thus, under current law, a defendant may bring in evidence of a victim's past sexual conduct with another person in an attempt to show that the victim consented to the defendant's own sexual conduct.

With regard to the admission of evidence concerning the defendant's previous sexual conduct with the victim, the committee amended the bill to provide that such evidence would be considered relevant if it is probative of whether a reasonable person, knowing what the defendant knew at the time of the alleged offense, would have believed that the alleged victim freely and affirmatively permitted the sexual behavior complained of.

In addition, this bill provides that the "Rape Shield Law" applies in prosecutions for lewdness if the alleged offense is committed in the presence of a child under the age of 13 or in the presence of a mentally disabled person.

Finally, this bill provides that the provisions of the "Rape Shield Law" extends to a victim's gynecological records.

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2 of semen, pregnancy or disease [is a person other than the
3 defendant].

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5 the victim shall be relevant only if the previous sexual conduct
6 with the victim could lead the defendant to reasonably believe
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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
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Release: IMMEDIATE
AUG. 11, 1994

Gov. Christie Whitman today signed legislation to strengthen the state's laws against domestic violence and to broaden the law's coverage. The Governor, at the same time, signed legislation to strengthen the state's rape shield law for victims of sexual assaults.

The Governor signed the three bills at a public ceremony in her office.

The bills signed are:

A-286, sponsored by Assemblywomen Rose Heck R-Bergen, and Loretta Weinberg, D-Bergen, to expand the coverage of the domestic violence act to include any person who has been subjected to such violence at the hands of a person with whom the victim has had a dating relationship. The bill also requires training in domestic violence procedures for all law enforcement officers, judges and judicial personnel.

A-289, sponsored by Assemblywoman Heck, Assembly Speaker Garabed Haytaian, R-Warren; Assemblyman Joseph Azzolina, R-Monmouth; Assemblywoman Nia Gill, D-Essex, and Assemblyman Leroy Jones, D-Essex, and in the Senate By Sen. Robert Martin, R-Morris, to broaden the protection provided in the domestic violence act and to clarify court and police procedure in the handling of domestic violence matters.

A-677, sponsored by Assemblywoman Joanna Gregory-Scocchi, and Assemblyman Jeff Warsh, both R-Middlesex, to increase the restrictions on the admissibility of evidence concerning a sex crime victim's prior sexual conduct.
