

1 **Rule 412. Admissibility of Victim's Sexual Behavior or Predisposition**

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2 (a) Prohibited Uses. The following evidence is not admissible in a criminal proceeding involving alleged  
3 sexual misconduct:

4 (1) evidence offered to prove that a victim engaged in other sexual behavior; or

5 (2) evidence offered to prove a victim's sexual predisposition.

6 (b) Exceptions. The court may admit the following evidence if the evidence is otherwise admissible  
7 under these rules:

8 (1) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other  
9 than the defendant was the source of semen, injury, or other physical evidence;

10 (2) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the  
11 sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; or

12 (3) evidence whose exclusion would violate the defendant's constitutional rights.

13 (c) Procedure to Determine Admissibility.

14 (1) Motion. If a party intends to offer evidence under Rule 412(b), the party must:

15 (A) file a motion that specifically describes the evidence and states the purpose for which it is to be  
16 offered;

17 (B) do so at least 14 days before trial unless the court, for good cause, sets a different time; and

18 (C) serve the motion on all parties.

19 (2) Notice to the Victim. The prosecutor shall timely notify the victim or, when appropriate, the victim's  
20 guardian or representative.

21 (3) Hearing. Before admitting evidence under this rule, the court must conduct an in camera hearing and  
22 give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the  
23 motion, related materials, and the record of the hearing ~~must be and remain sealed~~ are classified as  
24 protected.

25 (d) Definition of "Victim." In this rule, "victim" includes an alleged victim.

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27 **2016 Advisory Committee Note.** The 2016 amendment changes the classification of records described  
28 in subparagraph (c)(3) from sealed to protected. See CJA Rule 4-202.02.