

HOUSE BILL NO. 1086

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Oates)

A BILL to amend and reenact § 18.2-67.7 of the Code of Virginia, relating to admission of evidence; evidentiary hearing; excluded persons.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 18.2-67.7 of the Code of Virginia is amended and reenacted as follows:**

**§ 18.2-67.7. Admission of evidence (Supreme Court Rule 2:412 derived from this section).**

A. In prosecutions under this article, or under clause (iii) or (iv) of § 18.2-48, 18.2-370, 18.2-370.01, or 18.2-370.1, general reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted. Unless the complaining witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct shall be admitted only if it is relevant and is:

1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness's intimate parts; or

2. Evidence of sexual conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case; or

3. Evidence offered to rebut evidence of the complaining witness's prior sexual conduct introduced by the prosecution.

26 B. Nothing contained in this section shall prohibit the accused from presenting evidence relevant  
27 to show that the complaining witness had a motive to fabricate the charge against the accused. If such  
28 evidence relates to the past sexual conduct of the complaining witness with a person other than the  
29 accused, it shall not be admitted and may not be referred to at any preliminary hearing or trial unless the  
30 party offering same files a written notice generally describing the evidence prior to the introduction of any  
31 evidence, or the opening statement of either counsel, whichever first occurs, at the preliminary hearing or  
32 trial at which the admission of the evidence may be sought.

33 C. Evidence described in subsections A and B of this section shall not be admitted and may not be  
34 referred to at any preliminary hearing or trial until the court first determines the admissibility of that  
35 evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary hearing  
36 or trial. The court shall exclude from the evidentiary hearing all persons except the accused, the  
37 complaining witness, other necessary witnesses, ~~and~~ required court personnel, and persons whose  
38 presence, in the judgment of the court, would be supportive of the complaining witness and would not  
39 impair the conduct of a fair hearing or pose a substantial risk of influencing or affecting the content of the  
40 testimony. In such case, the judge shall admonish such support person to not prompt, communicate with,  
41 or influence the complaining witness in any way. A court shall not be precluded from exercising its  
42 discretion to remove a person from the courtroom if it believes such support person is prompting,  
43 communicating with, or influencing the complaining witness. If the court determines that the evidence  
44 meets the requirements of subsections A and B of this section, it shall be admissible before the judge or  
45 jury trying the case in the ordinary course of the preliminary hearing or trial. If the court initially  
46 determines that the evidence is inadmissible, but new information is discovered during the course of the  
47 preliminary hearing or trial which may make such evidence admissible, the court shall determine in an  
48 evidentiary hearing whether such evidence is admissible.

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