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## SENATE BILL NO. 524

Senate Amendments in [ ] — February 15, 1994

A *BILL to amend and reenact § 18.2-67.7 of the Code of Virginia, relating to rape and other sexual assault offenses.*

Patrons—Woods, Barry, Benedetti, Chichester, Earley, Gartlan, Howell, Miller, K.G., Quayle, Stolle and Stosch; Delegate: McClure

Referred to the Committee for Courts of Justice

**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; instructions to the jury.

A. In prosecutions under this article, 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.

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

C. Evidence described in subsections A and B of this section shall not be admitted and may not be referred to at any preliminary hearing or trial until the court first determines the admissibility of that evidence at an evidentiary hearing to be held before the evidence is introduced at such preliminary hearing or trial. The court shall exclude from the evidentiary hearing all persons except the accused, the complaining witness, other necessary witnesses, and required court personnel. If the court determines that the evidence meets the requirements of subsections A and B of this section, it shall be admissible before the judge or jury trying the case in the ordinary course of the preliminary hearing or trial. If the court initially determines that the evidence is inadmissible, but new information is discovered during the course of the preliminary hearing or trial which may make such evidence admissible, the court shall determine in an evidentiary hearing whether such evidence is admissible.

~~[ D. In any prosecution under this article, the jury may be instructed, in the discretion of the court, that a request by the complaining witness, during or before the commission of the alleged offense, that the defendant act, or refrain from acting, in a particular manner, including but not limited to a request that the defendant use a condom, is not in and of itself evidence of consent.~~

D. Evidence that the complaining witness acted before or during the commission of the alleged offense to prevent impregnation or transmittal of a disease shall not create a presumption of consent to an act of sexual conduct. ]

ENGROSSED

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