

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 851
SENATE BILL 84

AN ACT TO AMEND THE RULES OF EVIDENCE IN RAPE CASES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 8 of the General Statutes is hereby amended by adding thereto a new Article to be numbered 7A which reads as follows:

"ARTICLE 7A.

"Restrictions on Evidence in Rape Cases.

"§ 8-58.1. Restrictions on evidence in rape cases. — (a) As used in this section, the term 'sexual behavior' means sexual activity of the complainant other than the sexual act which is at issue in the indictment on trial.

(b) The sexual behavior of the complainant is irrelevant to any issue in the prosecution unless such behavior:

- (1) was between the complainant and the defendant; or
- (2) is evidence of specific instances of sexual behavior offered for the purpose of showing that the act or acts charged were not committed by the defendant; or
- (3) is evidence of a pattern of sexual behavior so distinctive and so closely resembling the defendant's version of the alleged encounter with the complainant as to tend to prove that such complainant consented to the act or acts charged or behaved in such a manner as to lead the defendant reasonably to believe that the complainant consented; or
- (4) is evidence of sexual behavior offered as the basis of expert psychological or psychiatric opinion that the complainant fantasized or invented the act or acts charged.

(c) No evidence of sexual behavior shall be introduced at any time during the trial of a charge of rape or any lesser-included offense thereof, nor shall any reference to any such behavior be made in the presence of the jury, unless and until the court has determined that such behavior is relevant under subsection (b). Before any questions pertaining to such evidence are asked of any witness, the proponent of such evidence shall first apply to the court for a determination of the relevance of the sexual behavior to which it relates. The proponent of such evidence may make application either prior to trial pursuant to G.S. 15A-952, or during the trial at the time when the proponent desired to introduce such evidence. When application is made, the court shall conduct an in-camera hearing, which shall be transcribed, to consider the proponent's offer of proof and the arguments of counsel, including any counsel for the complainant, to determine the extent to which such behavior is relevant. In the hearing, the proponent of the evidence shall establish the basis of admissibility of such evidence. If the court finds that the evidence is relevant, it shall enter an order stating that the evidence may be admitted and the nature of the questions which will be permitted.

(d) The record of the in-camera hearing and all evidence relating thereto shall be open to inspection only by the parties, the complainant, their attorneys and the court and its agents, and shall be used only as necessary for appellate review. At any probable cause hearing, the

judge shall take cognizance of the evidence, if admissible, at the end of the in-camera hearing without the questions being repeated or the evidence being resubmitted in open court."

Sec. 2. This act shall become effective on January 1, 1978, and shall apply to offenses committed on and after that date.

In the General Assembly read three times and ratified, this the 30th day of June, 1977.