

Georgia's Rape Shield Statute

Under Georgia's Rape Shield Statute, O.C.G.A. § 24-4-412, evidence relating to the alleged victim's past sexual behavior is generally inadmissible. According to the statute, "past sexual behavior" may include, but is not limited to: "evidence of the complaining witness' marital history, mode of dress, general reputation for promiscuity, nonchastity, or sexual mores contrary to the community standards." Neither the defense nor the prosecution—which may seek to draw attention to the alleged victim's *absence* of sexual experience or her chastity—may offer evidence under this statute.

Under the new Georgia Code of Evidence effective January 1, 2013, the statute was expanded to cover the additional crimes of statutory rape, child molestation, aggravated child molestation, aggravated sodomy, sexual battery and aggravated sexual battery.

The Rape Shield Statute was created to protect potential victims of sexual offenses from character attacks unrelated to the guilt or innocence of the accused. *Turner v. State*, 312 Ga. App. 315, 718 S.E.2d 545 (2011)) and to assist the "truth-seeking process by preventing the jury from being inflamed or impassioned and deciding the case on irrelevant and prejudicial evidence." *Walker v. State*, 308 Ga. App. 176, 707 S.E.2d 122 (2011).

Despite these concerns, the Rape Shield Statute provides some exceptions under which evidence of the alleged victim's "past sexual history" may be admissible. According to section (b) of O.C.G.A. § 24-4-412, if the court determines that the past sexual behavior "directly involved the participation of the accused and finds that the evidence expected to be introduced supports an inference that the accused could have reasonably believed that the complaining witness consented to the conduct complained of in the prosecution," then the evidence may be admitted.

Section (c) also permits the introduction of evidence that is "so highly material that it will substantially support a conclusion that the accused reasonably believed that the complaining witness consented to the conduct complained of" if the court finds that justice mandates the admission of such evidence. In *Brown v. State*, 214 Ga. App. 676, 448 S.E.2d 723 (1994), the court held that evidence that the defendant had personal knowledge of the alleged victim's prior history of prostitution with other individuals may be admissible under the statute.

When determining the issue of consent, the Rape Shield Statute only requires a *reasonable inference* that the alleged victim consented to sexual relations with the accused. Certain behaviors or verbal exchanges can indicate consent. In *Brown v. State* (cited above), the court found consent based on the existence of a longstanding customer-prostitute relationship between the accused and the alleged victim. The consent exception to the Rape Shield Statute does not apply to offenses such as incest or child molestation where consent is not a defense. *Worth v. State*, 183 Ga. App. 68, 358 S.E.2d 251 (1987).

In the Georgia Supreme Court's decision in *Villafranco v. State*, it was held that the Rape Shield Statute does not apply where the evidence is being used to impeach the alleged victim's testimony.

In *Villafranco*, the Supreme Court reasoned that "[t]here is no justification for letting the witness affirmatively resort to perjurious testimony in reliance on the defendant's disability to challenge her credibility...The shield provided by this law should not be perverted into a license to use questionable or possibly perjurious testimony free from the risk of adverse confrontation."

Prior to trial, the defendant must file a written motion notifying the court of his intent to introduce

evidence of the alleged victim's past sexual behavior. This motion will prompt the court to conduct an *in camera* hearing outside the presence of the jury in order to examine the defendant's proffered evidence.

If the court determines the evidence is admissible, it must issue an order stating what evidence may be introduced by the defense at trial and in what manner the evidence may be introduced.