

making allowance, to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer, in an amount which fairly represents the saving in collection expense;

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(4) In the case of a an individual or group health insurance policy, the payment of differing amounts of reimbursement to insureds who elect to receive health care goods or services from providers designated by the insurer, provided that each insurer shall on or before August 1 of each year file with the commissioner summary data regarding the financial reimbursement offered to providers so designated.

Any insurer which proposes to offer an arrangement authorized under this clause shall disclose prior to its initial offering and on or before August 1 of each year thereafter as a supplement to its annual statement submitted to the commissioner pursuant to section 60A.13, subdivision 1, the following information:

- (a) the name which the arrangement intends to use and its business address;
- (b) the name, address and nature of any separate organization which administers the arrangement on the behalf of the insurers; and
- (c) the names and addresses of all providers designated by the insurer under this clause and the terms of the agreements with designated health care providers.

The commissioner shall maintain a record of arrangements proposed under this clause, including a record of any complaints submitted relative to the arrangements.

Approved May 14, 1987

CHAPTER 114—S.F.No. 948

An act relating to crimes; permitting evidence showing a tendency to fabricate allegations of sexual assault; requiring three days' notice of intent to introduce evidence of victim's prior sexual conduct; making certain statutory changes for the purpose of consistency with the rules of evidence; amending Minnesota Statutes 1986, section 609.347.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 609.347, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

609.347 EVIDENCE.

Subdivision 1. In a prosecution under sections 609.342 to 609.346, the testimony of a complainant victim need not be corroborated.

Subd. 2. In a prosecution under sections 609.342 to 609.346, there is no need to show that the complainant victim resisted the actor accused.

Subd. 3. In a prosecution under sections 609.342 to 609.346 or 609.365, evidence of the complainant's victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in subdivision 4; and only to the extent that the court finds that any of the following proposed evidence is material to the fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value. The evidence can be admitted only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature and only in the circumstances set out in paragraphs (a) and (b). For the evidence to be admissible under paragraph (a), subsection (i), the judge must find by a preponderance of the evidence that the facts set out in the accused's offer of proof are true. For the evidence to be admissible under paragraph (a), subsection (ii) or paragraph (b), the judge must find that the evidence is sufficient to support a finding that the facts set out in the accused's offer of proof are true, as provided under Rule 901 of the Rules of Evidence.

(a) When consent or fabrication by the complainant of the victim is the a defense in the case, the following evidence of such is admissible:

(i) evidence of the victim's previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue on the part of the complainant, relevant and material to the issue of consent or fabrication. Evidence of such conduct engaged in more than one year prior to the date of alleged offense is inadmissible. In order to find a common scheme or plan, the judge must find that the victim made prior allegations of sexual assault which were fabricated; and

(ii) evidence of the victim's previous sexual conduct with the accused.

(b) When the prosecution's case includes evidence of specific instances of sexual activity showing the source of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial, evidence of specific instances of the victim's previous sexual conduct is admissible solely to show the source of the semen, pregnancy, or disease.

(c) Evidence of the complainant's past sexual conduct with the defendant;

(d) For purposes of impeachment, when such evidence is offered to rebut specific testimony of the complainant.

Subd. 4. The defendant accused may not offer evidence described in subdivision 3 except pursuant to the following procedure:

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(a) A motion shall be made by the ~~defendant~~ accused at least three business days prior to trial, unless later for good cause shown, ~~stating to the court and prosecutor that the defendant has an~~ setting out with particularity the offer of proof of the relevancy of the evidence of that the accused intends to offer, relative to the previous sexual conduct of the complainant which is proposed to be presented victim;

(b) If the court ~~finds that~~ deems the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and in such hearing shall allow the ~~defendant~~ accused to make a full presentation of the offer of proof;

(c) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the ~~defendant~~ accused regarding the previous sexual conduct of the complainant victim is relevant and material to the fact of consent, admissible under subdivision 3 and is not so prejudicial as to be inadmissible that its probative value is not substantially outweighed by its inflammatory or prejudicial nature, the court shall make an order stating the extent to which evidence is admissible ~~under subdivision 3 and prescribing the nature of questions to be permitted at trial.~~ The ~~defendant~~ accused may then offer evidence pursuant to the order of the court;

(d) If new information is discovered after the date of the hearing or during the course of trial, which may make evidence described in subdivision 3 admissible, the ~~defendant shall~~ accused may make the ~~disclosures under an offer of proof pursuant to~~ clause (a) of this subdivision and the court shall order an in camera hearing to determine whether the proposed evidence is admissible by the standards herein.

Subd. 5. In a prosecution under sections 609.342 to 609.346, the court shall not instruct the jury to the effect that:

(a) It may be inferred that a complainant victim who has previously consented to sexual intercourse with persons other than the ~~defendant~~ accused would be therefore more likely to consent to sexual intercourse again; or

(b) The ~~complainant's~~ victim's previous or subsequent sexual conduct in and of itself may be considered in determining the credibility of the ~~complainant~~ victim; or

(c) Criminal sexual conduct is a crime easily charged by a complainant victim but very difficult to disprove by a ~~defendant~~ an accused because of the heinous nature of the crime; or

(d) The jury should scrutinize the testimony of the complainant victim any more closely than it should scrutinize the testimony of any witness in any felony prosecution.

Subd. 6. (a) In a prosecution under sections 609.342 to 609.346 involving

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a psychotherapist and patient, evidence of the patient's personal or medical history is not admissible except when:

(1) the ~~defendant~~ accused requests a hearing at least three business days prior to trial and makes an offer of proof of the relevancy of the history; and

(2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial value.

(b) The court shall allow the admission only of specific information or examples of conduct of the ~~complainant~~ victim that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other evidence of the history may be introduced.

(c) Violation of the terms of the order is grounds for mistrial but does not prevent the retrial of the ~~defendant~~ accused.

Subd. 7. EFFECT OF STATUTE ON RULES. Rule 404, paragraph (c) of the Rules of Evidence is superseded to the extent of its conflict with this section.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective August 1, 1987, and applies to proceedings commenced on or after that date.

Approved May 14, 1987

CHAPTER 115—S.F.No. 1097

An act relating to crimes; domestic assault; requiring courts to issue written orders for conditional release; requiring arrest on violation of conditions of release; providing for notice to alleged victims of conditions of release; amending Minnesota Statutes 1986, section 629.72, subdivision 2, and by adding subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 629.72, subdivision 2, is amended to read:

Subd. 2. **JUDICIAL REVIEW; RELEASE; BAIL.** The judge before whom the arrested person is brought shall review the facts surrounding the arrest and detention. The arrested person must be ordered released pending trial or hearing on the person's personal recognizance or on an order to appear or upon the execution of an unsecured bond in a specified amount unless the judge determines that release (1) will be inimical to public safety, (2) will create a threat of bodily harm to the arrested person, the victim of the alleged assault, or another, or (3) will not reasonably assure the appearance of the arrested person at subse-

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