

Supreme Court of Texas

Misc. Docket No. 25-9102

Final Approval of New Texas Rule of Evidence 412

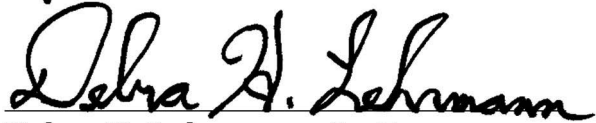
ORDERED that:

1. On August 29, 2025, in Misc. Dkt. No. 25-9064, the Court repealed former Texas Rule of Evidence 412 and replaced it with a new rule.
2. New Texas Rule of Evidence 412 took effect on September 1, 2025, and the Court invited public comment until December 1, 2025.
3. Following the comment period, the Court amended the new rule. This order incorporates the amendments and contains the final version of the new rule, effective January 1, 2026. The final version is shown in both redline and clean forms. The redline form shows changes made since Misc. Dkt. No. 25-9064.
4. As stated in Misc. Dkt. No. 25-9064, for criminal proceedings commencing before September 1, 2025, the rule in effect on the date the proceeding commenced governs.
5. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to the Governor, the Lieutenant Governor, and each elected member of the Legislature; and
 - d. submit a copy of this order for publication in the *Texas Register*.

Dated: December 19, 2025.



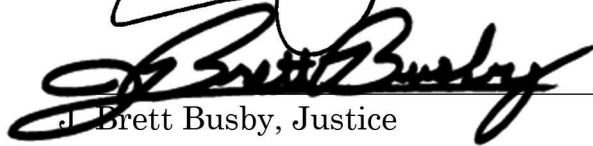
James D. Blacklock, Chief Justice



Debra H. Lehrmann, Justice



John P. Devine, Justice



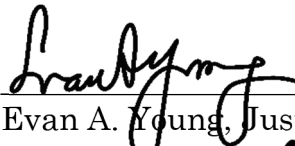
J. Brett Busby, Justice



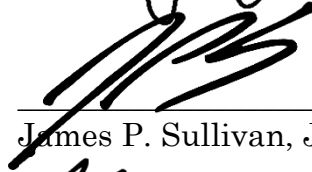
Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice



James P. Sullivan, Justice



Kyle D. Hawkins, Justice

TEXAS RULES OF EVIDENCE

Rule 412. Evidence of Previous Sexual Conduct in Criminal Cases

- (a) **Definition of “Victim.”** In this rule, “victim” includes ~~the~~an alleged victim of the charged offense and an alleged victim of an extraneous offense or act ~~with respect to which evidence is introduced during the prosecution of an offense described in paragraph~~subdivision (b).
- (b) **Applicable Offenses.** This rule applies ~~to a proceeding in the~~a prosecution of a defendant for an offense, or for an attempt or conspiracy to commit an offense, under any of the following provisions of the Texas Penal Code:
- (1) Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of Persons);
 - (2) Section 20A.03 (Continuous Trafficking of Persons), if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8);
 - (3) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);
 - (4) Section 21.11 (Indecency with a Child);
 - (5) Section 22.011 (Sexual Assault);
 - (6) Section 22.012 (Indecent Assault); or
 - (7) Section 22.021 (Aggravated Sexual Assault).
- (c) **Reputation or Opinion Evidence.** In the prosecution of an offense described in ~~paragraph~~subdivision (b), reputation or opinion evidence of ~~an alleged~~a victim’s past sexual behavior is not admissible.
- (d) **Evidence of a Specific Instance of Past Sexual Behavior.**
- (1) ***In General.*** ~~Except as provided in paragraph (2), in~~In the prosecution of an offense described in ~~paragraph~~subdivision (b), evidence of a specific instance of ~~an alleged~~a victim’s past sexual behavior is not admissible.
 - (2) ***Exceptions; Procedure for Offering Evidence.*** ~~A defendant may not offer evidence~~Evidence of a specific instance of ~~an alleged~~a victim’s past sexual behavior ~~unless~~is admissible only if the court:

- (A) ~~on a motion by the defendant made outside the presence of the jury, conducts an in camera examination of the evidence in the presence of the court reporter; and~~ admits the evidence in accordance with subdivision (e);
- (B) ~~determines that the probative value of the evidence outweighs the danger of unfair prejudice to the alleged victim and that the evidence~~ finds that the evidence:
 - (i) is necessary to rebut or explain scientific or medical evidence offered by the attorney representing the state;
 - (ii) concerns past sexual behavior with the defendant and is offered by the defendant to prove consent, if the lack of consent is an element of the offense;
 - (iii) relates to the ~~alleged~~ victim's motive or bias;
 - (iv) is admissible under Rule 609; or
 - (v) is constitutionally required to be admitted; and
- (C) determines that the probative value of the evidence outweighs the danger of unfair prejudice to the victim.

(e) **Procedure for Offering Evidence; Record Sealed.**

- (1) **Offering Evidence.** Before offering evidence of a specific instance of a victim's past sexual behavior, a defendant must, outside the presence of the jury, move to do so. The court must then conduct an in camera examination of the evidence in the presence of a court reporter and determine whether it is admissible. A defendant may not refer in the jury's presence to any evidence of a victim's past sexual behavior without first obtaining such a ruling from the court.
- ~~(1)~~(2) **Record Sealed.** The court must seal the record of the in camera examination conducted under paragraph (d)(1) and preserve the examination record it as part of the record in the case.

Notes and Comments

Comment to 2025 Change: Former Rule 412 is repealed and replaced with this rule to implement Senate Bill 535, enacted by the 89th Legislature, and article 38.872 of the Texas Code of Criminal Procedure.

TEXAS RULES OF EVIDENCE

Rule 412. Evidence of Previous Sexual Conduct in Criminal Cases

- (a) **Definition of “Victim.”** In this rule, “victim” includes an alleged victim of the charged offense and an alleged victim of an extraneous offense or act described in subdivision (b).
- (b) **Applicable Offenses.** This rule applies in a prosecution of a defendant for an offense, or for an attempt or conspiracy to commit an offense, under any of the following provisions of the Texas Penal Code:
 - (1) Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of Persons);
 - (2) Section 20A.03 (Continuous Trafficking of Persons), if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8);
 - (3) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);
 - (4) Section 21.11 (Indecency with a Child);
 - (5) Section 22.011 (Sexual Assault);
 - (6) Section 22.012 (Indecent Assault); or
 - (7) Section 22.021 (Aggravated Sexual Assault).
- (c) **Reputation or Opinion Evidence.** In the prosecution of an offense described in subdivision (b), reputation or opinion evidence of a victim’s past sexual behavior is not admissible.
- (d) **Evidence of a Specific Instance of Past Sexual Behavior.**
 - (1) ***In General.*** In the prosecution of an offense described in subdivision (b), evidence of a specific instance of a victim’s past sexual behavior is not admissible.
 - (2) ***Exceptions.*** Evidence of a specific instance of a victim’s past sexual behavior is admissible only if the court:
 - (A) admits the evidence in accordance with subdivision (e);

- (B) finds that the evidence:
 - (i) is necessary to rebut or explain scientific or medical evidence offered by the attorney representing the state;
 - (ii) concerns past sexual behavior with the defendant and is offered by the defendant to prove consent, if the lack of consent is an element of the offense;
 - (iii) relates to the victim's motive or bias;
 - (iv) is admissible under Rule 609; or
 - (v) is constitutionally required to be admitted; and
- (C) determines that the probative value of the evidence outweighs the danger of unfair prejudice to the victim.

(e) Procedure for Offering Evidence; Record Sealed.

- (1) **Offering Evidence.** Before offering evidence of a specific instance of a victim's past sexual behavior, a defendant must, outside the presence of the jury, move to do so. The court must then conduct an in camera examination of the evidence in the presence of a court reporter and determine whether it is admissible. A defendant may not refer in the jury's presence to any evidence of a victim's past sexual behavior without first obtaining such a ruling from the court.
- (1) **Record Sealed.** The court must seal the record of the in camera examination conducted under paragraph (e)(1) and preserve it as part of the record in the case.

Notes and Comments

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