

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.520j Evidence of victim's sexual conduct.

Sec. 520j.

(1) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted under sections 520b to 520g unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) Evidence of the victim's past sexual conduct with the actor.

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

(2) If the defendant proposes to offer evidence described in subsection (1)(a) or (b), the defendant within 10 days after the arraignment on the information shall file a written motion and offer of proof. The court may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1). If new information is discovered during the course of the trial that may make the evidence described in subsection (1)(a) or (b) admissible, the judge may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1).

History: Add. 1974, Act 266, Eff. Apr. 1, 1975

Constitutionality: This section, the rape-shield law, is not unconstitutional. *People v Arenda*, 416 Mich 1; 330 NW2d 814 (1982). In *Michigan v Lucas*, 500 US 145; 111 S Ct 1743; 114 L Ed2d 205 (1991), the United States Supreme Court held that the Michigan Court of Appeals had erred in adopting a "per se rule" that the notice-and-hearing requirement of Michigan's rape-shield law violated the Sixth Amendment to the United States Constitution in all cases where it was used to preclude evidence of past sexual conduct between a rape victim and a defendant (see *People v Lucas*, 160 Mich App 692; 408 NW2d 431 (1987)). The Court found that the statute "serves legitimate state interests in protecting against surprise, harassment, and undue delay. Failure to comply with this requirement may ... justify even the severe sanction of preclusion."

Compiler's Notes: Section 2 of Act 266 of 1974 provides: "Saving clause." "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."