

Appendix A

Sec. 4-11. Admissibility of Evidence of Sexual Conduct in Criminal Prosecutions

“In any prosecution for sexual assault under sections 53a-70, 53a-70a, and 53a-71 to 53a-73a, inclusive, no evidence of the sexual conduct of the victim may be admissible unless such evidence is (1) offered by the defendant on the issue of whether the defendant was, with respect to the victim, the source of semen, disease, pregnancy or injury, or (2) offered by the defendant on the issue of credibility of the victim, provided the victim has testified on direct examination as to his or her sexual conduct, or (3) any evidence of sexual conduct with the defendant offered by the defendant on the issue of consent by the victim, when consent is raised as a defense by the defendant, or (4) otherwise so relevant and material to a critical issue in the case that excluding it would violate the defendant’s constitutional rights. Such evidence shall be admissible only after an in camera hearing on a motion to offer such evidence containing an offer of proof. If the proceeding is a trial with a jury, such hearing shall be held in the absence of the jury. If, after a hearing, the court finds that the evidence meets the requirements of this section and that the probative value of the evidence outweighs its prejudicial effect on the victim, the court may grant the motion. The testimony of the defendant during a hearing on a motion to offer evidence under this section may not be used against the defendant during the trial if such motion is denied, except that such testimony may be admissible to impeach the credibility of the defendant if the defendant elects to testify as part of the defense.” General Statutes § 54- 86f (a)

COMMENTARY

Section 4-11 quotes General Statutes § 54-86f (a), which covers the admissibility of evidence of a victim’s sexual conduct in prosecutions for sexual assault and includes a procedural framework for admitting such evidence. In 2015, § 54-86f was amended with the addition of subsections (b) through (d). Those subsections address procedural matters rather than admissibility and, therefore, are not included in Section 4-11. See General Statutes (Rev. to 2015) § 54-86f, as amended by Public Acts 2015, No. 15-207, § 2 (concerning, inter alia, sealing transcripts and motions filed in association with hearing under § 54-86f and limiting disclosure

by defense of state disclosed evidence). Although Section 4-11, by its terms, is limited to criminal prosecutions for certain enumerated sexual assault offenses, the Supreme Court has applied the exclusionary principles of § 54-86f to prosecutions for risk of injury to a child brought under General Statutes § 53-21, at least when the prosecution also presents sexual assault charges under one or more of the statutes enumerated in § 54-86f. See *State v. Kulmac*, 230 Conn. 43, 54, 644 A.2d 887 (1994). The court reasoned that the policies underlying the rape shield statute were equally applicable when allegations of sexual assault and abuse form the basis of both the risk of injury and sexual assault charges. See *id.*, 53–54. Although the Code expresses no position on the issue, Section 4-11 does not preclude application of the rape shield statute’s general precepts, as a matter of common law, to other situations in which the policies underlying the rape shield statute apply. See *State v. Rolon*, 257 Conn. 156, 183–85, 777 A.2d 604 (2001) (five part test for determining admissibility of evidence of child’s previous sexual abuse to show alternative source of child’s sexual knowledge).

In 2021, “Criminal Prosecutions” was added to the title of this section for ease of reference, in light of the adoption of Section 4-12, Admissibility of Evidence of Victim’s Sexual Behavior in Civil Proceedings Involving Alleged Sexual Misconduct.