

Appendix A (102616)

Sec. 6-11. Prior Consistent Statements of Witnesses; Constancy of Accusation by a Sexual Assault [Victim] Complainant

(a) **General rule.** Except as provided in this section, the credibility of a witness may not be supported by evidence of a prior consistent statement made by the witness.

(b) **Prior consistent statement of a witness.** If the credibility of a witness is impeached by (1) a prior inconsistent statement of the witness, (2) a suggestion of bias, interest or improper motive that was not present at the time the witness made the prior consistent statement, or (3) a suggestion of recent contrivance, evidence of a prior consistent statement made by the witness is admissible, in the discretion of the court, to rebut the impeachment.

(c) Constancy of accusation by a sexual assault [victim] complainant.

(1) If the defense impeaches the credibility of a sexual assault complainant regarding any out-of-court complaints or delayed reporting of the alleged sexual assault, the state shall be permitted to call constancy of accusation witnesses. [A person to whom a sexual assault victim has reported the alleged assault] Such witnesses may testify that the allegation was made and when it was made, provided that the [victim] complainant has testified to the facts of the alleged assault and to the identity of the person or persons to whom the alleged assault was reported. Any testimony by the witnesses about details of the alleged assault shall be limited to those details necessary to associate the [victim's] complainant's allegations with the pending charge. The testimony of the witnesses is admissible only [to corroborate the victim's testimony and not for substantive purposes] with regard to whether the complaint was made and not to corroborate the substance of the complaint.

(2) If the complainant's credibility is not impeached by the defense regarding any out-of-court complaints or delayed reporting of the alleged sexual assault, constancy of accusation testimony shall not be permitted, but, rather, the trial court shall provide appropriate instructions to the jury regarding delayed reporting.

COMMENTARY

(a) General rule.

Connecticut's rule on the admissibility of prior consistent statements is phrased in terms of a general prohibition subject to exceptions. E.g., *State v. Valentine*, 240 Conn. 395, 412–13, 692 A.2d 727 (1997); *State v. Dolphin*, 178 Conn. 564, 568–69, 424 A.2d 266 (1979). Exceptions to the general prohibition are set forth in subsections (b) and (c).

(b) Prior consistent statement of a witness.

Common law permits the use of a witness' prior statement consistent with the witness' in-court testimony to rehabilitate the witness' credibility after it has been impeached via one of the three forms of impeachment listed in the rule. E.g., *State v. Valentine*, supra, 240 Conn. 413; *State v. Brown*, 187 Conn. 602, 607–608, 447 A.2d 734 (1982). The cases sometimes list a fourth form of impeachment—a claim of inaccurate memory—under which prior consistent statements could be admitted to repair credibility. E.g., *State v. Valentine*, supra, 413; *State v. Anonymous* (83-FG), 190 Conn. 715, 729, 463 A.2d 533 (1983). This form of impeachment is not included because it is subsumed under the “impeachment by prior inconsistent statements” category. The only conceivable situation in which a prior consistent statement could be admitted to counter a claim of inaccurate memory involves: (1) impeachment by a prior inconsistent statement made some time after the event when the witness' memory had faded; and (2) support of the witness' in-court testimony by showing a prior consistent statement made shortly after the event when the witness' memory was fresh. Cf., e.g., *Brown v. Rahr*, 149 Conn. 743, 743–44, 182 A.2d 629 (1962); *Thomas v. Ganezer*, 137 Conn. 415, 418–21, 78 A.2d 539 (1951).

Although Connecticut has no per se requirement that the prior consistent statement precede the prior inconsistent statement used to attack the witness' credibility; see *State v. McCarthy*, 179 Conn. 1, 18, 425 A.2d 924 (1979); the trial court may consider the timing of the prior consistent statement as a factor in assessing its probative value.

Prior consistent statements introduced under subsection (b) are admissible for the limited purpose of repairing credibility and are not substantive evidence. E.g., *State v. Brown*, supra, 187 Conn. 607; *Thomas v. Ganezer*, supra, 137 Conn. 421.

In stating that evidence of a witness' prior consistent statement is admissible "in the discretion of the court," Section 6-11 stresses the broad discretion afforded the trial judge in admitting this type of evidence. See *Thomas v. Ganezer*, supra, 137 Conn. 420; cf. *State v. Mitchell*, 169 Conn. 161, 168, 362 A.2d 808 (1975), overruled in part on other grounds by *State v. Higgins*, 201 Conn. 462, 472, 518 A.2d 631 (1986).

(c) Constancy of accusation by a sexual assault [victim] complainant.

Subsection (c) reflects the supreme court's recent modification of the constancy of accusation rule [in *State v. Troupe*, 237 Conn. 284, 304, 677 A.2d 917 (1996) . See *State v. Samuels*, 273 Conn. 541, 547–49, 871 A.2d 1005 (2005)] in *State v. Daniel W.E.*, 322 Conn. 593, 142 A.3d 265 (2016).

Evidence introduced under subsection (c) is admissible [for corroborative purposes only] "only for the purpose of negating any inference that, because there was a delay in reporting the offense, the offense did not occur, and, therefore, such evidence may only be used in considering whether the complaint was made, and not to corroborate the substance of the complaint." *State v. Daniel W.E.*, supra, 322 Conn. 616. The admissibility of constancy of accusation testimony under *State v. Daniel W.E.* is subject to the limitations established in *State v. Troupe*, 237 Conn. 284, 304, 677 A.2d 917 (1996) (testimony of constancy witness strictly limited to details necessary to associate complaint with pending charge, such as time and place of alleged assault and identity of alleged assailant). See *State v. Daniel W.E.*, supra, 629. Evidence may be introduced substantively only where permitted elsewhere in the Code. E.g., Section 8-3 (2) (spontaneous utterance hearsay exception); see *State v. Troupe*, supra, 304 n.19.

[Admissibility is contingent on satisfying the relevancy and balancing standards found in Sections 4-1 and 4-3, respectively. See *id.*, 305 & n.20.]

Upon request, the court shall give a limiting instruction prior to the admission of constancy of accusation testimony from any of the individuals to whom a complainant had reported the alleged sexual assaults. *State v. Salazar*, 151 Conn. App. 463, 475–76, 93 A.3d 1192 (2014).

If defense counsel does not challenge the complainant's credibility regarding out-of-court complaints or delayed reporting, constancy evidence is not admissible, but the court shall instruct the jury that: (1) there are many reasons why sexual assault victims

may delay officially reporting the offense, and (2) to the extent that the complainant delayed reporting the alleged offense, the delay should not be considered by the jury in evaluating the complainant's credibility. See *State v. Daniel W.E.*, supra, 322 Conn. 629; Connecticut Criminal Jury Instructions § 7.2-1, available at <http://www.jud.ct.gov/JI/Criminal/Criminal.pdf>.