

# Expert Testimony in Sexual Assault Cases

*The mission of the Pennsylvania Coalition Against Rape is to work to eliminate all forms of sexual violence and to advocate for the rights and needs of victims of sexual assault.* 🌈

## Position:

The Pennsylvania Coalition Against Rape supports the admissibility of expert witness testimony for both the defense and prosecution in sexual assault cases.

## Rationale:

Jurors can more effectively do their job of determining the guilt or innocence of an alleged sex offender when a highly qualified expert witness testifies in sexual assault cases. This expert in sexual assault victim behavior and social science research will help jurors sort through counterintuitive behaviors and emotional responses of victims to see that justice is served.

All 50 states, the District of Columbia, and military courts permit expert testimony for the prosecution in sexual assault cases.

## Background:

Historically, rape laws were based on the false belief that rape is rare and victims are likely to lie about it. Prior to Act No. 75 (42 Pa. C. S. § 5920) becoming law in 2012, jurors in Pennsylvania were forced to rely on their “common sense” and knowledge gained from TV courtroom dramas to assess the behaviors of sexual assault victims. Expert testimony from medical professionals, law enforcement, victim advocates, and counselors who are knowledgeable in the behaviors of victims of sexual assault was not permitted in Pennsylvania courtrooms (for the prosecution of an alleged perpetrator). The 49 other U.S. states, the District of Columbia and military courts all permitted expert testimony prior to the passage of Act No. 75 (42 Pa. C. S. § 5920).

The counterintuitive behavior of both male and female victims of sexual assault has led to many misconceptions of an alleged victim’s behavior.\* An alleged victim’s credibility



is called into question if he or she:

- Did not physically resist her attacker;
- Sustained only minor injuries;
- Did not complain to authorities instantaneously;
- Was assaulted by an acquaintance

In 1976, legislation passed in Pennsylvania offsetting these specific misconceptions, eliminating the requirements of resistance, lack of physical injuries, and the need for a prompt complaint for a victim to claim that a sexual assault had occurred.

The case for inadmissibility of expert witness testimony was decided in 1988 in *Commonwealth of Pennsylvania v.*



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*Gallagher*, 519 Pa. 291, 547 A. 2d 355. According to Supreme Court records, an expert's testimony for the prosecution only served to strengthen the victim's credibility. Because credibility should be determined solely by the jury, the court ruled the expert testimony improperly encroached into the duty of the jury.

Most states did not pass legislation deciding whether or not to use expert testimony in sexual assault trials. This subject was generally decided through court cases.

House Bill (HB) 1264, formerly HB 66 and HB 2255 in prior sessions, was passed by the House unanimously in June 2011. It was passed by the Senate one year later. Following concurrence, the bill was signed by Governor Tom Corbett on June 29, 2012

as Act No. 75 (42 Pa. C. S. § 5920). The Act permits expert testimony about victim behavior in sexual assault cases.

The Pennsylvania Coalition Against Rape may issue statements regarding public policy affecting sexual violence victims and rape crisis centers. All position statements adopted by the Pennsylvania Coalition Against Rape will be viewed as the official position statement, the center, when publicly or privately voicing oppositions to the statement, will do so in the capacity of an independent program and in no way as a member of the Pennsylvania Coalition Against Rape.

*\* References to extensive research and Pennsylvania legislation dealing with the counterintuitive behaviors of victims of sexual assault may be found in an Amicus Brief, Commonwealth of PA vs. Claybrook, 3/12/2012.*



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