

**SUPREME COURT OF PENNSYLVANIA  
COMMITTEE ON RULES OF EVIDENCE**

**ADOPTION REPORT**

**Amendment of Pa.R.E. 613**

On September 4, 2024, the Supreme Court amended Pa.R.E. 613 to clarify the temporal requirement for prior statements used for rehabilitation.<sup>1</sup> The Committee on Rules of Evidence has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committees, not the Court.

Pennsylvania's law of evidence has long disfavored witness bolstering with limited exceptions:

As a general rule a statement made by a witness at one time, while admissible to contradict him, is not competent to corroborate or substantiate his present testimony. Were it not otherwise, the door might be opened to the fabrication of evidence. However, there are certain well-recognized exceptions to this general rule: prior declarations of a witness, which are consistent with his present testimony, may be admissible to corroborate his present testimony if it be alleged that the witness' present testimony is recently fabricated, or if it be claimed that the witness is testifying from corrupt motives.<sup>[1]</sup>

Evidence of consonant statements, if admissible, are admissible only in rebuttal and then only for the purpose of showing that that which the witness now testifies to has not been recently fabricated and not for the purpose of proving the truth of the present testimony.

*Commonwealth v. Wilson*, 148 A.2d 234, 242 (Pa. 1959) (footnote omitted). These rehabilitative exceptions have been codified in Pa.R.E. 613(c). See, e.g., *Commonwealth v. Montalvo*, 986 A.2d 84, 96 (Pa. 2009).<sup>2</sup>

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<sup>1</sup> Stylistic amendments have also been made to conform to the Supreme Court of Pennsylvania Style and Rulemaking Guide for Procedural and Evidentiary Rules.

<sup>2</sup> A line of case law once recognized another bolstering exception without prior impeachment in the context of the sexual assault of a child. However, that practice was apparently discontinued as being inconsistent with Pa.R.E. 613(c). See *Commonwealth v. Bond*, 190 A.3d 664, 696-70 (Pa. Super. 2018); see also *Commonwealth v. Raboin*, 270 A.3d 1158, 2021 WL 6059391 at \*4-5 (Pa. Super. 2021) (unpublished opinion).

Adopted in 1998 and remaining substantively static, Pa.R.E. 613(c) governs the admissibility of a witness's prior consistent statement to rehabilitate the witness's credibility after impeachment. Subdivision (c)(1) permits the use of a prior consistent statement to rebut an express or implied charge of fabrication, bias, improper influence or motive, or faulty memory provided that the prior consistent statement predates the act or event providing motive for the allegedly influenced testimony. Under subdivision (c)(2), there is no temporal condition for using a prior consistent statement to rehabilitate a witness who made a prior inconsistent statement that the witness has denied or explained. See *also Commonwealth v. Harris*, 852 A.2d 1168, 1176 (Pa. 2004).

It was suggested to the Committee that the concluding language of subdivision (c)(1), "before that which has been charged existed or arose," may not clearly convey that the prior consistent statement must predate the charged fabrication, bias, improper influence or motive, or faulty memory. To more clearly convey this temporal condition, subdivision (c)(1) has been amended by replacing the generic phrase "that which has been charged existed" with the same list that begins the subdivision:

Evidence of a witness's prior consistent statement is admissible to rehabilitate the witness's credibility if the opposing party is given an opportunity to cross-examine the witness about the statement and the statement is offered to rebut an express or implied charge of:

- (1) fabrication, bias, improper influence or motive, or faulty memory **[and], provided that** the statement was made before **[that which has been charged existed or] the alleged fabrication, bias, improper influence or motive, or faulty memory** arose[.]

Pa.R.E. 613(c)(1).

The Committee did not publish this proposal for comment as the amendment does not substantively alter the rule. See Pa.R.J.A. 103(a)(3) (permitting adoption of rule without prior publication).

These amendments become effective January 1, 2025.

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The following commentary has been removed from Rule 613:

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 23, 1999, effective immediately; amended March 10, 2000, effective

July 1, 2000; rescinded and replaced January 17, 2013, effective March 18, 2013; amended March 1, 2017, effective April 1, 2017.

*Committee Explanatory Reports:*

Final Report explaining the March 23, 1999 technical amendments to paragraph (b)(3) published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the March 10, 2000 amendments adding "inconsistent" to section (a) published with the Court's Order at 30 Pa.B. 1645 (March 25, 2000).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the March 1, 2017 revision of the Comment published with the Court's Order at 47 Pa.B. 1627 (March 18, 2017).