

## **I.R.E. 412. Sex Crime Cases; Relevance of Victim's Past Behavior.**

Idaho Rules of Evidence Rule 412. Sex Crime Cases; Relevance of Victim's Past Behavior.

(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sex crime, reputation or opinion evidence of the past sexual behavior of an alleged victim of such sex crime is not admissible.

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sex crime, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is -

(1) admitted in accordance with subdivisions (c)(1) and (c)(2) and is constitutionally required to be admitted; or

(2) admitted in accordance with subdivision (c) and is evidence of -

(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which the sex crime is alleged; or

(C) false allegations of sex crimes made at an earlier time; or

(D) sexual behavior with parties other than the accused which occurred at the time of the event giving rise to the sex crime charged.

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(c)

(1) If the person accused of committing a sex crime intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than five days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties.

(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision (b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of Rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which the sex crime is alleged.

(e) For purposes of this rule, the term "sex crime" means --

(1) rape, the infamous crime against nature, forcible penetration with a foreign object; sexual abuse of a child under age sixteen years, sexual exploitation of a child, lewd conduct with a minor child under sixteen, or sexual battery of a minor child sixteen or seventeen years of age;

(2) any other crime under the law of the state of Idaho that involved: contact, without consent,

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between any part of the defendant's body or an object and the genitals or anus of another person; or contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

(3) assault with intent to commit any of the crimes included in subsections (1) and (2);

(4) battery with intent to commit any of the crimes included in subsections (1) and (2);

(5) kidnaping for the purpose of committing any of the crimes included in subsections (1) and (2); or

(6) any attempt or conspiracy to commit any of the crimes included in subsections (1) and (2).

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987; amended February 26, 1997, effective July 1, 1997.)

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