



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

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

**(a) Prohibited Uses.** Notwithstanding any other provision of law, in a criminal case in which a defendant is accused of a sex crime, reputation or opinion evidence of the alleged victim's past sexual behavior is not admissible.

**(b) Additional Prohibited Uses and Exceptions.** Notwithstanding any other provision of law, in a criminal case in which a defendant is accused of a sex crime, evidence of an alleged victim's past specific instances of sexual behavior is also not admissible, but the following such evidence may be admitted:

(1) an alleged victim's past sexual behavior, if offered to prove that someone other than the defendant was the source of semen or injury or other physical evidence; or

(2) an alleged victim's past sexual behavior with respect to the person accused of the sex crime, if offered by the defendant to prove consent; or

(3) an alleged victim's prior false allegations of sex crimes made at an earlier time; or

(4) an alleged victim's sexual behavior with someone other than the defendant that occurred at the time of the event giving rise to the sex crime charged; or

(5) evidence whose exclusion would violate the defendant's constitutional rights.

### **(c) Procedure to Determine Admissibility.**

(1) Motion. If a defendant intends to offer evidence under Rule 412(b), the defendant must:

(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) do so at least five (5) days before trial unless the court, based on a determination 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 the evidence relates has newly arisen in the case, allows the motion



to be made at a later date; and

(C) serve the motion on all parties.

(2) Hearing. Before admitting evidence under this rule, the court must conduct an in camera hearing at which the parties may call witnesses, including the alleged victim, and offer other relevant evidence. Notwithstanding the provisions of Rule 104(b), if the relevance of the evidence which the defendant seeks to offer depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent in camera hearing scheduled for such purpose, must accept evidence on the issue of whether such condition of fact is fulfilled and determine the issue.

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

**(d)** For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which the sexual misconduct 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, 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 March 26, 2018, effective July 1, 2018.)

**Source URL:** <https://isc.idaho.gov/ire412>