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Admissibility of Prior Acts of Sexual Misconduct against a Criminal Defendant charged with a Sexual Offense

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Research Guides

Admissibility of Prior Acts of Sexual Misconduct against a Criminal Defendant charged with a Sexual Offense

Guide Information

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Scope of Research

This research guide will assist you in assessing the admissibility of prior acts of sexual misconduct against a criminal defendant charged with a sexual offense in Georgia compared with the Federal Rules' approach.

This research guide should be used as an introduction to the federal laws and the laws of Georgia, which govern the admissibility of prior acts of sexual misconduct against a criminal defendant charged with a sexual offense. The materials are provided as a starting point for the law student's or lawyer's research. This research guide provides legislation, rules, and case law specific to Georgia and the Federal Rules of Evidence. Secondary sources that the author has found useful are also included. Use these materials to begin a deeper analysis of the issues your research presents.

Interest Groups and Associations

Georgia Association of Criminal Defense Lawyers: http://www.gacdl.org/

American Bar Association Criminal Justice Section: http://www.abanet.org/crimjust/

About the Author

Nicole Ware is a third-year law student at Georgia State University College of Law. Nicole wrote this web research guide for Professor Johnson's Advanced Legal Research Class in the Spring 2009 semester.

Send an email to njohnson@gsu.edu for more information about this bibliography.

User Warning

The annotations provided here do not constitute legal advice. This guide is designed to be a starting point for research and is not comprehensive. Further, this guide has not been updated since April 2009. Do not rely on the author's interpretations of the cases or statutes provided. If you have questions on how to proceed with your research, talk to the reference librarians.

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Primary Sources

Federal Rules of Evidence

There are a few key Federal Rules of Evidence directly related to the admissibility of prior acts of sexual misconduct against a criminal defendant charged with a sexual offense. In the United States, federal courts follow the Federal Rules of Evidence. Congress passed Rules 413, 414, and 415 as part of the Violent Crime Control and Law Enforcement Act of 1994, Pub.L. No. 103-322, § 320935, 108 Stat. 1796, 2135 -37 (1994). Federal Rules 413 – 415, generally allow this type of evidence to be admissible, superseding the general rule expressed in Rule 404, that excludes character evidence when offered to prove conforming conduct.

The Federal Rules of Evidence, 28 U.S.C.A.

i. Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

This rule provides that in a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant. In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

ii. Rule 414. Evidence of Similar Crimes in Child Molestation Cases

This rule provides that in a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant. In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

iii. Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

This rule provides that in a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rules 413 and 414 of the Federal Rules of Evidence. A party who intends to offer evidence under this Rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

Federal Case Law

United States v. Guidry, 456 F.3d 493 (5th Cir. 2006)

The Court of Appeals held that admission of testimony regarding the act of doing or perpetrating a sexual offense is not limited to those acts proven by conviction and is admissible under Federal Rule of Evidence 413. In sexual assault cases, Rule 413 supersedes the general rule of 404, that excludes character evidence when offered to prove conforming conduct.

United States v. Sioux, 362 F.3d 1241 (9th Cir. 2004)

Rule 413 allows the admission of evidence of other instances in which the defendant committed a sexual assault “for its bearing on any matter to which it is relevant.” The other instances need not have resulted in conviction and may be prior or subsequent to the charged offense.

United States v. Blue Bird, 372 F. 3d 989, 992 (8th Cir. 2004)

Under Rule 413, any other act offered under the rule must constitute an act of sexual assault or attempted sexual assault.

U.S. v. Crawford, 413 F.3d 873 (8th Cir. 2005)

Rule allowing admission of similar crimes in sexual assault cases supersedes prohibition against admission of character evidence.

Seeley v. Chase, 443 F.3d 1290 (10th Cir. 2006)

Evidence of prior sexual assaults may be admitted if (1) the defendant is on trial for a sexual assault offense, (2) the evidence proffered is of another sexual assault, and (3) the court finds the evidence is relevant.

Constitutional Sources

U.S. Const. amend. V

...No person...shall be deprived of life, liberty, or property without due process of law...

U.S. Const. amend. VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. XIV

...nor shall any State deprive any person of life, liberty, or property, without due process of law...

Georgia Rules of Evidence/Statutes

The Georgia Statutes do not speak directly to the admissibility of evidence of prior acts of sexual misconduct, but rather to the admissibility of evidence and character evidence, generally. Georgia Case Law has interpreted the following statutes to allow this type of evidence as a "similar transaction."

Statutes:

i. OCGGA §24-2-1. Evidence must be relevant

The statute provides that evidence must relate to the questions being tried by the jury and bear upon them directly or indirectly. Irrelevant matter should be excluded.

ii. OCGA §24-2-2. Character and conduct of parties, relevancy

The statute provides that the general character of the parties and especially their conduct in other transactions are irrelevant matter unless the nature of the action involves such character and renders necessary or proper the investigation of such conduct.

iii. OCGA §24-2-3. Matters not relevant in prosecution for rape

The statute provides that evidence regarding the past sexual history of a complaining witness in a sexual assault case shall not be admissible under the code section except for a few limited exceptions where consent is at issue and the evidence could show that the defendant believed the complaining witness consented and the court allows the evidence.

Georgia Case Law

Wiley v. State, 245 Ga.App. 580 (Ga. Ct. App. 2000)

Evidence that the defendant placed his hands inappropriately on the body of a 14-year-old family friend several years earlier was admissible as similar transaction evidence for a case regarding aggravated child molestation.

Culver v. State, 230 Ga. App. 224 (Ga. Ct. App. 1998)

In crimes involving sexual offenses, evidence of similar previous transactions is admissible to show the lustful disposition of the defendant and to corroborate the victim's testimony.... There need only be evidence that the defendant was the perpetrator of both crimes and sufficient similarity or connection between the independent crime and the offenses charged.

Williams v. State, 261 Ga. 640 (Ga. 1998)

Provides that before admission of similar transaction evidence, the State must affirmatively show that (1) it is introducing evidence of an independent offense or act for an appropriate purpose, (2) there is sufficient evidence to establish that the accused committed the independent offense or act, and (3) there is sufficient connection or similarity between the independent offense or act and the crime charged so that proof of the former tends to prove the latter.

Ingram v. State, 280 Ga. App. 467 (Ga. 2006)

In all sex offense cases, the similar transactions rule is most liberally construed to allow evidence of the accused’s motive, intent and state of mind.

Lee v. State, 250 Ga. App 110 (Ga. Ct. App. 2001)

In a prosecution for child molestation, prior incidents of the defendant molesting children or indicating his desire to do so are admissible to prove the defendant's “lustful disposition” towards child victims.

Simpson v. State, 271 Ga. 772 (Ga. 1999)

Evidence that the defendant possessed sexual photos, videos, or other paraphernalia is “inadmissible unless it shows defendant's lustful disposition towards the sexual activity with which he is charged … sexually explicit material cannot be introduced merely to show a defendant's interest in sexual activity … [unless it is] linked to the crime charged.”

Johnson v. State, 274 Ga. App. 69 (Ga. Ct. App. 2005)

In a child molestation case, any pornography shown to the child is admissible as part of the res gestae.

Holmes v. State, 216 Ga. App. 874 (Ga. Ct. App. 1995)

Even where sexual offenses are involved, the evidence of prior crimes or acts should not be admitted unless the prejudice it creates is outweighed by its relevancy.

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Secondary Sources

Law Review Commentaries

Imwinkelried, Edward J. *A Small Contribution to the Debate over the Proposed Legislation Abolishing the Character Evidence Prohibition in Sex Offense Prosecutions*, 44 Syracuse L. Rev. 1125 (1993).

An analysis of the state of the law before Federal Rule of Evidence 413 was adopted and the arguments for and against allowing evidence of past sexual misconduct into evidence. The article provides a critical analysis of the Department of Justice's arguments in favor of the adoption of Federal Rule of Evidence 413.

Tedeschi, Debra Sherman. *Federal Rule of Evidence 413: Redistributing the "Credibility Quotient,"* 57 U. Pitt. L. Rev. 107 (1995).

This article focuses almost solely on Federal Rule of Evidence 413 and the issue of admitting evidence of similar acts at a sexual assault trial. The author includes a discussion of the Rule itself and the legislative history of Rule 413. The article defends the adoption of Federal Rule of Evidence 413.

Leonard, David P. *Evidence and the political process,* 22 Fordham Urb. L.J. 305 (1995).

Examines the development of the use of Character Evidence over time in the United States, including common law origins, the founders' approach, and the political processes involved in changing the Federal Rules of Evidence. The author expresses fear that the adoption of Federal Rules of Evidence 413-415 could upset the "delicate balance represented by the Rules of Evidence.

Walter, Jeffrey. Federal Rules of Evidence 413-415: *Laws are like medicine: They generally cure an evil by a lesser… evil*, 30 Tex. Tech L. Rev 1503 (1999). The article examines Federal Rules of Evidence 413-415, including the factors, parties, and influences affecting the passage of the rules, psychological theories that support and oppose use of prior acts to predict future conduct, and a constitutional analysis. The author concludes by deciding that the restraints placed on the new rules by the court appear to make the new rules a lesser evil used to attack a greater evil.

Treatises and Books

Paul S. Milich, Georgia Rules of Evidence (2d ed., Thomson West 2002 & Supp. 2005). Call No. KFG540 .M54 2002

Professor Milich discusses the Georgia Statutes regarding Evidence, compares the Georgia Rules to the Federal Rules, and provides the instrumental cases.

Michael H. Graham, Handbook of Federal Evidence §413:1 (6th ed., Thomson West 2006). Call No. KF8935.G68

This book provides and in depth analysis and reviews more than 30,000 federal cases construing and applying the Federal Rules of Evidence. It addresses rulings on evidence, preliminary questions, limited admissibility, and judicial notice along with many other topics.

Kenneth S. Broun, McCormick on Evidence § 190 (6th ed., Thomson West 2006). Call Number: KF8935.M29

An analysis of theories and rules of Evidence. This hornbook covers not only the Federal Rules of Evidence but also looks at jurisdictions that do not follow the Federal Rules. If an issue is presented that a specific jurisdiction has not reached a conclusion upon, the author argues theories that may suggest the answer and points out precedent from other jurisdictions which may help guide the analysis.

American Law Reports

George L. Blum, J.D., Annotation, *Admissibility in Rape Case, of Evidence that Accused Raped or Attempted to Rape Person Other Than Prosecutrix – Prior Offenses,* 86 ALR 5th 59 (2001).

This ALR was originally published in 2001, but is made current by the weekly addition of relevant new cases. This article discusses the admissibility of evidence that the accused raped or attempted to rape someone other than the Prosecutrix. This annotation collects the state and federal cases that have considered the question of the admissibility in a rape case of evidence that the accused raped or attempted to

rape a person other than the complainant prior to the time of the charged offense.

Harrington, W.A, Annotation, *Remoteness in Time of Other Similar Offenses Committed by Accused as Affecting Admissibility of Evidence Thereof in Prosecution for Sex Offense*, 88 ALR 3rd 8 (1978).

This ALR was originally published in 1978, but is made current by the weekly addition of relevant new cases. This article explores the effect of time and remoteness on the admissibility of evidence of prior sexual acts in a case where the defendant has been charged with a sexual offense.

Davis, R.P., *Admissibility, in Prosecution for Sexual Offense, of Evidence of Other Similar Offenses*, 77 ALR 2d 841 (1961).

This ALR was originally published in 1961, but is made current by the weekly addition of relevant new cases. This article discusses the rules and exceptions regarding the admissibility of evidence of other similar offenses in prosecutions for sexual offenses. There is a note that the Federal Rules of Evidence, which were adopted after the creation of this ALR, may have a bearing on some of the Federal case law and additions regarding Federal cases are included in the annotation.

Encyclopedias

Corpus Juris Secundum

CJS Criminal Law § 991, Inclination or Intention to Commit Crime--Sex Offense Cases.

American Jurisprudence

Am. Jur. 2d Evidence § 468, Admissibility in Criminal Cases, Generally.

Am. Jur. 2d Evidence § 469, Admissibility in Civil Cases, Generally.

Am. Jur. 2d Evidence § 470, Definitions.

Am. Jur. 2d Evidence § 471, Relation to Character Evidence Rule.

Am. Jur. 2d Evidence § 4722, Evidence of Similar Crimes in Sexual Assault Cases.

Am. Jur. 2d Evidence § 475, Advance Notice to Defendant Required.

Am. Jur. 2d Rape § 55, Forcible Rape--Acts Involving Prosecuting Witness.

Looseleafs

BNA Criminal Law Reporter

This is a weekly publication that analyzes current issues surrounding criminal law. The looseleaf is available on Lexis,Westlaw, and via the GSU Law Library's E-journal locator.

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Internet Sources

Lexis-Nexis

Lexis - Nexis provides full text and citation access to information in the reference, business, medical, and legal disciplines. The vast majority of the titles on LEXIS-NEXIS Academic (Lexis-Nexis) are available in full text, with a limited number available in abstract form. The service covers newspapers, magazines, wire services, federal and state court opinions, federal and state statutes, federal regulations, and SEC filings. News information is updated daily and wire services several times daily. LexisNexis has “Shepard’s” to check whether selected cases or statutes are still valid. LexisNexis also offer LexisOne which provides free case law searches.

Other non-legal sources

These sources serve well as starting points and give users an idea of general concepts.

Google.com

Bing.com

Yahoo.com

Wikipedia.com

Westlaw

Westlaw legal research and legal information services are designed for attorneys and other legal professionals who need access to primary law and secondary materials. Westlaw has many features, including a Key Digest System feature assigns discrete legal concepts a database identifier (Key Numbers) to help streamline research. Westlaw also has a popular *KeyCite* Citator feature to assist in verifying whether a cited source (e.g., a case or statute) is still valid, which is equivalent to Lexis' Shepard's feature.

Loislaw

Loislaw is a fee-based research tool for accessing legal resources (including primary law, public records, treatises, and legal forms), providing flexible subscription periods from one day to one year, beginning at $39.95.

Other legal internet sources

Justia.com

Easily navigable for non-attorneys. Search feature and topic areas make this website easy to use. This is a free source.

Law.com

Law.com connects legal professionals to more than 20 award-winning national and regional legal publications online, including *The American Lawyer*, *The National Law Journal*, *New York Law Journal* and *Legal Times*, and delivers top legal news electronically to a growing national and global audience of subscribers each day on The Newswire. The website has a search engine which can be helpful for non-attorney researchers.

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