
SUBSTITUTE SENATE BILL 6933

State of Washington

60th Legislature

2008 Regular Session

By Senate Judiciary (originally sponsored by Senators Marr, Hargrove, Hewitt, Franklin, Pflug, Carrell, Berkey, Kauffman, Haugen, McCaslin, Rockefeller, Fraser, and Kilmer)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to admissibility of evidence in sex offense cases;
2 adding a new section to chapter 10.58 RCW; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** In Washington, the legislature and the
5 courts share the responsibility for enacting rules of evidence. The
6 court's authority for enacting rules of evidence arises from a
7 statutory delegation of that responsibility to the court and from
8 Article IV, section 1 of the state Constitution. *State v. Fields*, 85
9 Wn.2d 126, 129, 530 P.2d 284 (1975).

10 The legislature's authority for enacting rules of evidence arises
11 from the Washington supreme court's prior classification of such rules
12 as substantive law. See *State v. Sears*, 4 Wn.2d 200, 215, 103 P.2d 337
13 (1940) (the legislature has the power to enact laws which create rules
14 of evidence); *State v. Pavelich*, 153 Wash. 379, 279 P. 1102 (1929)
15 ("rules of evidence are substantiative law").

16 The legislature adopts this exception to Evidence Rule 404(b) to
17 ensure that juries receive the necessary evidence to reach a just and
18 fair verdict.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.58 RCW
2 to read as follows:

3 (1) In a criminal action in which the defendant is accused of a sex
4 offense, evidence of the defendant's commission of another sex offense
5 or sex offenses is admissible, notwithstanding Evidence Rule 404(b),
6 if the evidence is not inadmissible pursuant to Evidence Rule 403.

7 (2) In a case in which the state intends to offer evidence under
8 this rule, the attorney for the state shall disclose the evidence to
9 the defendant, including statements of witnesses or a summary of the
10 substance of any testimony that is expected to be offered, at least
11 fifteen days before the scheduled date of trial or at such later time
12 as the court may allow for good cause.

13 (3) This section shall not be construed to limit the admission or
14 consideration of evidence under any other evidence rule.

15 (4) For purposes of this section, "sex offense" means:

16 (a) Any offense defined as a sex offense by RCW 9.94A.030;

17 (b) Any violation under RCW 9A.44.096 (sexual misconduct with a
18 minor in the second degree); and

19 (c) Any violation under RCW 9.68A.090 (communication with a minor
20 for immoral purposes).

21 (5) For purposes of this section, uncharged conduct is included in
22 the definition of "sex offense."

23 (6) When evaluating whether evidence of the defendant's commission
24 of another sexual offense or offenses should be excluded pursuant to
25 Evidence Rule 403, the trial judge shall consider the following
26 factors:

27 (a) The similarity of the prior acts to the acts charged;

28 (b) The closeness in time of the prior acts to the acts charged;

29 (c) The frequency of the prior acts;

30 (d) The presence or lack of intervening circumstances;

31 (e) The necessity of the evidence beyond the testimonies already
32 offered at trial;

33 (f) Whether the prior act was a criminal conviction; and

34 (g) Other facts and circumstances.

35 NEW SECTION. **Sec. 3.** (1) Section 2 of this act is based upon
36 Federal Rules of Evidence Rules 413 and 414, and federal appellate
37 court cases construing those rules.

1 (2) Section 2 of this act applies to any case that is tried on or
2 after its adoption.

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