


Evidence

Sex Crimes & Special Witnesses



Special Rules in
Sex Crime Cases:
Rules 412, 413, 414, & 415

Rule 412: Sex-Offense Cases - The Victim

Prohibits presentation of evidence of sexual misconduct to show:

1. that the victim engaged in other sexual behavior, *or*
2. the victim's sexual predisposition

Rule 412: Sex-Offense Cases - The Victim

Exceptions:

1. Specific instances of the victim's sexual behavior to show that someone other than the defendant was the source of physical evidence
2. Specific instances of the victim's sexual history with the defendant, if offered by the defendant to prove consent, or if offered by prosecutor
3. Where due process requires

Rule 413: Similar Crimes in Sexual Assault Cases

Allows presentation of evidence that the defendant committed any other sexual assault, to be considered on any matter to which it is relevant

Rule 414: Similar Crimes in Child Molestation Cases

Allows evidence that the defendant committed any other child molestation, to be considered on any matter to which it is relevant

Rule 415: Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation

Establishes that Rules 413 and 414 apply to civil cases

Rules 413, 414, & 415:

- ▶ “Any matter” really means *any*: the evidence can even be admitted to show propensity
- ▶ Policy rationales: unusual disposition of offenders; problems of credibility and corroboration
- ▶ Evidence must be disclosed to the defendant at least 15 days before trial, or at later time if good cause is shown

Child and Other Special Witnesses

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Common examples of special witnesses:

- ▶ Young
- ▶ Elderly
- ▶ Impaired



Rule 601: Witness Competency

- ▶ Witnesses are presumed competent unless the rules provide otherwise
- ▶ This means age and mental capacity do not *per se* render a witness incompetent (except for very young children)

Competency, continued:



- ▶ Lack of capacity can be shown through testimony, physical evidence, or an in-court test of witness ability
- ▶ Extrinsic evidence of witness capacity is considered non-collateral and admissible
- ▶ Evidence may be presented regarding capacity at the time of testimony or at the time of perception

Rule 611: Witness Examination

- ▶ On direct examination, leading questions are not permitted “except as necessary to develop the witness’s testimony”
- ▶ This applies to the young, elderly, impaired, etc.

