
Judiciary Committee

SSB 6933

Title: An act relating to admissibility of evidence in sex offense cases.

Brief Description: Changing rules concerning admissibility of evidence in sex offense cases.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Marr, Hargrove, Hewitt, Franklin, Pflug, Carrell, Berkey, Kauffman, Haugen, McCaslin, Rockefeller, Fraser and Kilmer).

Brief Summary of Substitute Bill

- Allows, in a criminal prosecution for a sex offense, admission of evidence of the defendant's commission of any other sex offenses, whether charged or uncharged, unless the probative value of the evidence is outweighed by the danger of unfair prejudice.
- Requires a prosecutor to disclose evidence intended to be offered under this rule at least 15 days before trial, or later as the court allows for good cause.
- Provides factors which the trial judge must consider in evaluating whether evidence offered under the rule should be excluded.

Hearing Date: 2/27/08

Staff: Lara Zarowsky (786-7123).

Background:

Admissibility of Evidence

The rules of evidence bar the admission of any information or item into evidence that is not relevant to resolve the controversy at hand. Evidence that is relevant is admissible, unless otherwise barred by statute, the constitution, court rule, or the rules of evidence.

Relevance and Materiality

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Evidence is relevant if it has *any* tendency to make the existence of a material fact more probable or less probable than it would be without the evidence. The strength or weakness of this tendency is referred to as the "probative value" of the evidence.

Evidence is material if it is offered to prove or disprove an element of a legally cognizable claim included in the pleadings submitted to the court by the parties.

Prejudice and Probative Value

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

Unfair prejudice in this context is an undue tendency to suggest decision on an emotional or otherwise improper basis. One purpose of the bar on unfairly prejudicial evidence is to prevent a jury from overvaluing a particular piece of evidence by giving it more weight than is appropriate. In determining whether a piece of relevant evidence will be admitted, the court conducts a balancing test to weigh the probative value against the prejudicial impact.

Character Evidence

Evidence Rule 404 addresses character evidence, providing that evidence of a person's character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, with two exceptions. First, an accused may introduce evidence of his or her good character. This "opens the door" for the prosecution to rebut by introducing evidence of the accused's bad character. Second, an accused may introduce evidence of the character of the victim, for example to prove that the victim was the first aggressor. This "opens the door" for the prosecution to rebut the evidence by introducing contrary evidence of the victim's character.

Evidence Rule 404(b) prohibits the admission of evidence of "other crimes, wrongs, or acts" to prove the character of a person in order to show action in conformity with that character. However, such evidence may be admissible for other purposes, such as to provide proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Thus, evidence of other crimes or acts is barred *only* if its relevance is based on an inference that the other conduct establishes a propensity to engage in the conduct and to conclude that the accused did engage in such conduct on the occasion at issue.

Sexual Assault and Child Molestation Cases

Federal rules 413 and 414, effective in 1995, provide that evidence of a defendant's commission of other offenses of sexual assault or child molestation is admissible in a criminal case in which the defendant is accused of sexual assault or child molestation respectively, and may be considered for its bearing on any matter to which it is relevant.

Federal Evidence Rules 413 and 414 have not been incorporated into the rules of evidence governing civil and criminal proceedings in Washington.

Summary of Bill:

Allows, in a criminal action in which the defendant is accused of a sex offense, the admission of evidence of the defendant's commission of any other sex offenses, notwithstanding the bar on evidence of other crimes to prove the defendant's character in Evidence Rule 404(b), as long as the evidence is not inadmissible under Rule 403.

A "sex offense" is any charged or uncharged conduct that, if charged, would constitute:

- an offense for which the offender must register as a sex offender under RCW 9A.44.130;
- sexual misconduct with a minor in the second degree; or
- communication with a minor for immoral purposes.

A prosecuting attorney offering evidence under this rule must disclose the evidence that will be offered to the defendant at least 15 days before the date of trial, or later in the court's discretion upon a finding of good cause.

In evaluating whether evidence offered for admission under this rule should be excluded pursuant to evidence Rule 403, the trial judge must consider: the similarity of the prior acts to the acts charged; the length of time between the prior acts and the acts charged; the frequency of the prior acts; the presence or lack of intervening circumstances; the need for the evidence given the testimonies already offered at trial; whether the prior act was a criminal conviction; and other facts and circumstances.

The provisions of the bill apply prospectively, and are based on Rules 413 and 414 of the Federal Rules of Evidence, and federal appellate cases construing those rules.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.