

HOUSE BILL NO. HB0121

Admissibility of evidence in sex offense cases.

Sponsored by: Representative(s) Burkhardt, Hutchings and
Krone and Senator(s) Nutting

A BILL

for

1 AN ACT relating to civil and criminal procedure; specifying
2 circumstances under which evidence of a prior sexual
3 assault offense may be admitted in criminal and civil cases
4 involving sexual assault; and providing for an effective
5 date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 1-12-117 and 6-2-321 are created to
10 read:

11

12 **1-12-117. Evidence of similar acts in civil cases**
13 **concerning sexual assault.**

14

15 (a) In a civil case in which a claim for damages or
16 other relief is predicated on a party's alleged commission

1 of conduct constituting an offense of sexual assault as
2 defined in W.S. 6-2-321, evidence of that party's
3 commission of another offense or offenses of sexual assault
4 may be offered and considered as provided in W.S. 6-2-321.

5

6 (b) This section shall not be construed to limit the
7 admission or consideration of evidence under any other
8 section or court rule.

9

10 **6-2-321. Evidence of similar crimes in sexual assault**
11 **cases.**

12

13 (a) In a criminal case in which the defendant is
14 accused of an offense of sexual assault, evidence of the
15 defendant's commission of another offense or offenses of
16 sexual assault may be considered for its bearing on any
17 matter to which it is relevant.

18

19 (b) In any case in which a party intends to offer
20 evidence under this section, the following procedure shall
21 be used:

22

23 (i) A written motion shall be made by the
24 offering party to the court at least fifteen (15) days

1 prior to the scheduled start of the trial stating that the
2 party has an offer of proof of the relevancy of evidence of
3 the prior sexual assault;

4

5 (ii) The written motion shall be accompanied by
6 affidavits in which the offer of proof is stated;

7

8 (iii) If the court finds the offer of proof
9 sufficient, the court shall order a hearing in chambers,
10 and at the hearing allow the parties to be heard regarding
11 the offer of proof and other pertinent evidence;

12

13 (iv) At the conclusion of the hearing, if the
14 court finds that the probative value of the evidence
15 substantially outweighs the probability that its admission
16 will create unfair prejudice, the evidence shall be
17 admissible pursuant to this section. The court may make an
18 order stating what evidence may be introduced by the party,
19 which order may include the nature of the questions to be
20 permitted.

21

22 (c) In determining whether evidence of a prior sexual
23 assault should be admitted under this section, the court
24 shall consider:

1

2 (i) The probative value of the prior sexual
3 assault to prove the material fact it is intended to prove;

4

5 (ii) Whether the material fact is seriously
6 disputed;

7

8 (iii) How clearly the prior sexual assault has
9 been proven;

10

11 (iv) Whether other evidence is available;

12

13 (v) Whether the evidence of the prior sexual
14 assault is unnecessarily cumulative;

15

16 (vi) The time that has elapsed between the prior
17 sexual assault and the current allegations;

18

19 (vii) The similarity between the prior sexual
20 assault and the current allegations;

21

22 (viii) The likelihood of unfair prejudice
23 because of:

24

1 (A) The reprehensible nature of the prior
2 sexual assault;

3

4 (B) The sympathetic nature of the prior
5 victim;

6

7 (C) The disparity in seriousness between
8 the prior sexual assault and the current allegations;

9

10 (D) The appearance that a prior sexual
11 assault escaped punishment.

12

13 (ix) Whether a limiting instruction would
14 diminish the prejudicial effect of the evidence of the
15 prior sexual assault;

16

17 (x) Any other relevant factor.

18

19 (d) This section shall not be construed to limit the
20 admission or consideration of evidence under any other
21 section or court rule.

22

23 (e) As used in this section "offense of sexual
24 assault" means:

1

2 (i) Sexual assault as defined in W.S.
3 6-2-301(a)(v);

4

5 (ii) An offense under a statute from another
6 jurisdiction containing the same or similar elements as
7 sexual assault as defined in W.S. 6-2-301(a)(v); or

8

9 (iii) An attempt or conspiracy to engage in
10 conduct described in paragraph (i) or (ii) of this
11 subsection.

12

13 **Section 2.** This act is effective July 1, 2014.

14

15

(END)