

## **New Changes to the Louisiana Code of Evidence**

In 2016 the Louisiana Legislature amended 2 articles of the Louisiana Code of Evidence, Article 412 and 412.1. Additionally, Article 412.4 was enacted. The new laws became effective August 1, 2016. The complete text of this new legislation is copied below with the new parts highlighted. Copies of the Legislature's acts making the changes are attached.

The changes are incorporated in our edition of the Louisiana Code of Evidence 2017. Copies are available through [www.GulfCoastLegalPublishing.com](http://www.GulfCoastLegalPublishing.com) and Amazon.

### **Art. 404. Character evidence generally not admissible in civil or criminal trial to prove conduct; exceptions; other criminal acts**

A. Character evidence generally. Evidence of a person's character or a trait of his character, such as a moral quality, is not admissible **in a civil or criminal proceeding** for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of his character, such as a moral quality, offered by an accused, or by the prosecution to rebut the character evidence; provided that such evidence shall be restricted to showing those moral qualities pertinent to the crime with which he is charged, and that character evidence cannot destroy conclusive evidence of guilt.

(2) Character of victim. (a) Except as provided in Article 412, evidence of a pertinent trait of character, such as a moral quality, of the victim of the crime offered by an accused, or by the prosecution to rebut the character evidence; provided that in the absence of evidence of a hostile demonstration or an overt act on the part of the victim at the time of the offense charged, evidence of his dangerous character is not admissible; provided further that when the accused pleads self-defense and there is a history of assaultive behavior between the victim and the accused and the accused lived in a familial or intimate relationship such as, but not limited to, the husband-wife, parent-child, or concubinage relationship, it shall not be necessary to first show a hostile demonstration or overt act on the part of the victim in order to introduce evidence of the dangerous character of the victim, including specific instances of conduct and domestic violence; and further provided that an expert's opinion as to the effects of the prior assaultive acts on the accused's state of mind is admissible; or

(b) Evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. Evidence of the character of a witness, as provided in Articles 607, 608, and 609.

B. Other crimes, wrongs, or acts. (1) Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

(2) In the absence of evidence of a hostile demonstration or an overt act on the part of the victim at the time of the offense charged, evidence of the victim's prior threats against the accused

or the accused's state of mind as to the victim's dangerous character is not admissible; provided that when the accused pleads self-defense and there is a history of assaultive behavior between the victim and the accused and the accused lived in a familial or intimate relationship such as, but not limited to, the husband-wife, parent-child, or concubinage relationship, it shall not be necessary to first show a hostile demonstration or overt act on the part of the victim in order to introduce evidence of the dangerous character of the victim, including specific instances of conduct and domestic violence; and further provided that an expert's opinion as to the effects of the prior assaultive acts on the accused's state of mind is admissible.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989; Acts 1994, 3rd Ex. Sess., No. 51, §1; Acts 2016, No. 357, §1.

**Art. 412. Victim's past sexual behavior in sexual assault cases; trafficking offenses**

A.(1) Opinion and reputation evidence; sexual assault cases. When an accused is charged with a crime involving sexually assaultive behavior, reputation or opinion evidence of the past sexual behavior of the victim is not admissible.

(2) Other evidence; exceptions. When an accused is charged with a crime involving sexually assaultive behavior, evidence of specific instances of the victim's past sexual behavior is also not admissible except for:

(a) Evidence of past sexual behavior with persons other than the accused, upon the issue of whether or not the accused was the source of semen or injury; provided that such evidence is limited to a period not to exceed seventy-two hours prior to the time of the offense, and further provided that the jury be instructed at the time and in its final charge regarding the limited purpose for which the evidence is admitted; or

(b) Evidence of past sexual behavior with the accused offered by the accused upon the issue of whether or not the victim consented to the sexually assaultive behavior.

B.(1) Opinion and reputation evidence; trafficking. When an accused is charged with a crime involving human trafficking or trafficking of children for sexual purposes, reputation or opinion evidence of the past sexual behavior of the victim is not admissible.

(2) Evidence of specific instances of the victim's past sexual behavior is not admissible unless the evidence is offered by the prosecution in a criminal case to prove a pattern of trafficking activity by the defendant.

C. Motion. (1) Before the person, accused of committing a crime that involves sexually assaultive behavior, human trafficking, or trafficking of children for sexual purposes, may offer under Subparagraph (A)(2) or (B)(2) of this Article evidence of specific instances of the victim's past sexual behavior, the accused shall make a written motion in camera to offer such evidence. The motion shall be accompanied by a written statement of evidence setting forth the names and addresses of persons to be called as witnesses.

(2) The motion and statement of evidence shall be served on the state which shall make a reasonable effort to notify the victim prior to the hearing.

D. Time for a motion. The motion shall be made within the time for filing pre-trial motions specified in Code of Criminal Procedure Article 521, except that the court shall allow the motion to be made at a later date, if the court determines that:

(1) The evidence is of past sexual behavior with the accused, and the accused establishes that the motion was not timely made because of an impossibility arising through no fault of his own; or

(2) The evidence is of past sexual behavior with someone other than the accused, and the accused establishes that the evidence or the issue to which it relates is newly discovered and could not have been obtained earlier through the exercise of due diligence.

E. Hearing. (1) If the court determines that the statement of evidence contains evidence described in Subparagraph (A)(2) or (B)(2), the court shall order a hearing which shall be closed to determine if such evidence is admissible. At such hearing the parties may call witnesses.

(2) The victim, if present, has the right to attend the hearing and may be accompanied by counsel.

(3) If the court determines on the basis of the hearing described in Subparagraph (E)(1) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence may be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the victim may be examined or cross-examined. Introduction of such evidence shall be limited to that specified in the order.

(4) Any motion made under Subparagraph C and any statement of evidence, brief, record of a hearing, or like material made or used in connection with the motion shall be kept in a separate, sealed package as part of the record in the case. Nothing in this Article shall preclude the use of the testimony at such hearing in a subsequent prosecution for perjury or false swearing.

F. Past sexual behavior defined. For purposes of this Article, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which the offense of sexually assaultive behavior is alleged.

G. The rules of admissibility of evidence provided by this Article shall also apply to civil actions brought by the victim which are alleged to arise from sexually assaultive behavior, human trafficking, or trafficking of children for sexual purposes by the defendant, whether or not convicted of such crimes.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989; Acts 2014, No. 564, §5; Acts 2016, No. 357, §1.

#### **Art. 412.1. Victim's attire in sexual assault cases**

A. When an accused is charged with the crime of aggravated or first degree rape, forcible or second degree rape, simple or third degree rape, sexual battery, or second degree sexual battery, the manner and style of the victim's attire shall not be admissible as evidence that the victim encouraged or consented to the offense; however, items of clothing or parts thereof may be introduced in order to establish the presence or absence of the elements of the offense and the proof of its occurrence.

B. The rules of admissibility of evidence provided by this Article shall also apply to civil actions brought by the victim which are alleged to arise from the crimes of aggravated or first degree rape, forcible or second degree rape, simple or third degree rape, sexual battery, or second degree sexual battery committed by the defendant, whether or not convicted of such crimes.

Acts 1992, No. 725, §1; Acts 2004, No. 676, §4; Acts 2015, No. 184, §7; Acts 2016, No. 357, §1.

#### **Art. 412.4. Evidence of similar crimes, wrongs, or acts in domestic abuse cases and cruelty against juveniles cases**

A. When an accused is charged with a crime involving abusive behavior against a family member, household member, or with acts which constitute cruelty involving a victim who was under the age of seventeen at the time of the offense, evidence of the accused's commission of

another crime, wrong, or act involving assaultive behavior against a family member, or household member or acts which constitute cruelty involving a victim who was under the age of seventeen at the time of the offense, may be admissible and may be considered for its bearing on any matter to which it is relevant, subject to the balancing test provided in Article 403.

B. In a case in which the state intends to offer evidence under the provisions of this Article, the prosecution shall, upon request of the accused, provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes.

C. This Article shall not be construed to limit the admissibility or consideration of evidence under any other rule.

D. For purposes of this Article:

(1) "Abusive behavior" means any behavior of the offender involving the use or threatened use of force against the person or property of a family member or household member of the alleged offender.

(2) "Family member" means spouses, former spouses, parents and children, stepparents, stepchildren, foster parents, and foster children.

(3) "Household member" means any person having reached the age of majority presently or formerly living in the same residence with the offender as a spouse, whether married or not, or any child presently or formerly living in the same residence with the offender, or any child of the offender regardless of where the child resides.

Acts 2016, No. 399, §1.