

New Jersey Rules of Evidence

Article IV - Relevancy and its Limits

N.J.R.E. 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 402. Relevant Evidence Generally Admissible

Except as otherwise provided in these rules or by law, all relevant evidence is admissible.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Except as otherwise provided by these rules or other law, relevant evidence may be excluded if its probative value is substantially outweighed by the risk of (a) undue prejudice, confusion of issues, or misleading the jury or (b) undue delay, waste of time, or needless presentation of cumulative evidence.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes Evidence

(a) *Character evidence generally.* --Evidence of a person's character or character trait, including a trait of care or skill or lack thereof, is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion except:

(1) *Character of accused.* --Evidence of a pertinent trait of the accused's character offered by the accused, which shall not be excluded under Rule 403, or by the prosecution to rebut the same;

(2) *Character of victim.* --Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or 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 Rule 608.

(b) *Other crimes, wrongs, or acts.* --Except as otherwise provided by Rule 608(b), evidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a person in order to show that such person acted in conformity therewith. Such evidence may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident when such matters are relevant to a material issue in dispute.

(c) *Character and character trait in issue.* --Evidence of a person's character or trait of character is admissible when that character or trait is an element of a claim or defense.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; paragraphs (a) and (b) amended September 15, 2004 to be effective July 1, 2005; paragraph (b) amended September 12, 2006 to be effective July 1, 2007.

N.J.R.E. 405. Methods of Proving Character

(a) *Reputation, opinion, or conviction of crime.* --When evidence of character or a trait of character of a person is admissible, it may be proved by evidence of reputation, evidence in the form of opinion, or evidence of conviction of a crime which tends to prove the trait. Specific instances of conduct not the subject of a conviction of a crime shall be inadmissible.

(b) *Specific instances of conduct.* --When character or a trait of character of a person is an essential element of a charge, claim, or defense, evidence of specific instances of conduct may also be admitted.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 406. Habit; Routine Practice

(a) Evidence, whether corroborated or not, of habit or routine practice is admissible to prove that on a specific occasion a person or organization acted in conformity with the habit or routine practice.

(b) Evidence of specific instances of conduct is admissible to prove habit or routine practice if evidence of a sufficient number of such instances is offered to support a finding of such habit or routine practice.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 407. Effect of Presumption

Evidence of remedial measures taken after an event is not admissible to prove that the event was caused by negligence or culpable conduct. However, evidence of such subsequent remedial conduct may be admitted as to other issues.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 408. Settlement Offers and Negotiations

When a claim is disputed as to validity or amount, evidence of statements or conduct by parties or their attorneys in settlement negotiations, with or without a mediator present, including offers of compromise or any payment in settlement of a related claim, shall not be admissible to prove liability for, or invalidity of, or amount of the disputed claim. Such evidence shall not be excluded when offered for another purpose; and evidence otherwise admissible shall not be excluded merely because it was disclosed during settlement negotiations.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; amended September 15, 1998 to be effective July 1, 1999.

N.J.R.E. 409. Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, property damage, or similar expenses occasioned by an injury or other claim is not admissible to prove liability for the injury.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; amended September 15, 1998 to be effective July 1, 1999.

N.J.R.E. 410. Inadmissibility of Pleas, Plea Discussions and Related Statements

Except as otherwise provided in this rule, evidence of a plea of guilty which was later withdrawn, of any statement made in the course of that plea proceeding, and of any statement made during plea negotiations when either no guilty plea resulted or a guilty plea was later withdrawn, is not admissible in any civil or criminal proceeding against the person who made the plea or statement or who was the subject of the plea negotiations. However, such a statement is admissible (1) in any proceeding in which another statement made in the course of the same plea or plea discussions has been introduced and the statement should in fairness be considered contemporaneously with it, or (2) in a criminal proceeding for perjury, false statement, or other similar offense, if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible on the issue of that person's negligence or other wrongful conduct. Subject to Rule 403, this rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, control, bias, or prejudice of a witness.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 412. Prosecutions for Rape and Related Offenses [Not Adopted]

The current text of *N.J.S. 2C:14-7* (the Rape-Shield Law) is as follows:

a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of a child in violation of *N.J.S. 2C:24-4* or the fourth degree crime of lewdness in violation of subsection b. of *N.J.S. 2C:14-4*, evidence of the victim's previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and highly material and meets the requirements of subsections c. and d. of this section and that the probative value of the evidence offered substantially outweighs its collateral nature or the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

b. In the absence of clear and convincing proof to the contrary, evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

c. Evidence of previous sexual conduct with persons other than the defendant which is offered by any lay or expert witness shall not be considered relevant unless it is material to proving the source of semen, pregnancy or disease.

d. Evidence of the victim's previous sexual conduct with the defendant shall be considered relevant if it is probative of whether a reasonable person, knowing what the defendant knew at the time of the alleged offense, would have believed that the alleged victim freely and affirmatively permitted the sexual behavior complained of.

e. Evidence of the manner in which the victim was dressed at the time an offense was committed shall not be admitted unless such evidence is determined by the court to be relevant and admissible in the interest of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury or at such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination. A statement by the court of its findings shall also be included in the record.

f. For the purposes of this section, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, sexual activities reflected in gynecological records, living arrangement and life style. (L. 1978, c. 95; amended 1988, c. 69, § 1; 1994, c. 95, § 1; 1995, c. 237, § 1.)