

By Senator Williams

11-1158-98

1 A bill to be entitled
2 An act relating to evidence of crimes, wrongs,
3 or acts; amending s. 90.404, F.S.; revising
4 terminology; providing for admissibility into
5 evidence of uncharged crimes, wrongs, or acts
6 inseparable from or inextricably intertwined
7 with the crime charged, under certain
8 circumstances; providing definitions; providing
9 for admissibility of evidence of other "sexual
10 misconduct" by the defendant under certain
11 circumstances when the defendant is charged
12 with a sexual offense; providing for
13 admissibility of other "acts of domestic
14 violence" by the defendant under certain
15 circumstances when the defendant is charged
16 with an act of domestic violence; requiring the
17 state to furnish certain notice of intent to
18 the defendant or defendant's counsel regarding
19 the state's intent to offer evidence of
20 criminal offenses or sexual misconduct or
21 domestic violence committed by the defendant;
22 providing that notice is not required regarding
23 certain evidence of uncharged crimes, wrongs,
24 or acts inseparable from or inextricably
25 intertwined with the crime charged; providing
26 an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Section 90.404, Florida Statutes, is
31 amended to read:

1 90.404 Character evidence; when admissible.--
2 (1) CHARACTER EVIDENCE GENERALLY.--Evidence of a
3 person's character or a trait of character is inadmissible to
4 prove action in conformity with it on a particular occasion,
5 except:
6 (a) Character of accused.--Evidence of a pertinent
7 trait of character offered by an accused, or by the
8 prosecution to rebut the trait.
9 (b) Character of victim.--
10 1. Except as provided in s. 794.022, evidence of a
11 pertinent trait of character of the victim of the crime
12 offered by an accused, or by the prosecution to rebut the
13 trait; or
14 2. Evidence of a character trait of peacefulness of
15 the victim offered by the prosecution in a homicide case to
16 rebut evidence that the victim was the aggressor.
17 (c) Character of witness.--Evidence of the character
18 of a witness, as provided in ss. 90.608-90.610.
19 (2) OTHER CRIMES, WRONGS, OR ACTS; SEXUAL MISCONDUCT;
20 ACTS OF DOMESTIC VIOLENCE.--
21 (a) ~~Similar fact~~ Evidence of other crimes, wrongs, or
22 acts is admissible when relevant to prove a material fact in
23 issue, such as proof of motive, opportunity, intent,
24 preparation, plan, knowledge, identity, or absence of mistake
25 or accident, but it is inadmissible when the evidence is
26 relevant solely to prove bad character or propensity.
27 (b) Evidence of uncharged crimes, wrongs, or acts that
28 are inseparable from or inextricably intertwined with the
29 crime charged is admissible when relevant to prove a material
30 fact in issue, such as proof of motive, opportunity, intent,
31 preparation, plan, knowledge, identity, or an absence of

1 mistake or when such evidence tends to assist the trier of
2 fact in understanding the criminal conduct alleged.

3 (c)1. In a criminal case in which the defendant is
4 charged with a sexual offense, evidence of the defendant's
5 commission of other sexual misconduct is admissible and may be
6 considered for its bearing on any matter to which it is
7 relevant, including, but not limited to, corroboration of the
8 victim's testimony. Such evidence is admissible under this
9 subsection, notwithstanding the provisions of s. 90.403 when,
10 in discretion of the court, such evidence is not substantially
11 cumulative.

12 2. For purposes of this section, "sexual misconduct"
13 means conduct proscribed by s. 794.011 or s. 800.04.

14 (d)1. In a criminal case in which the defendant is
15 charged with an act of domestic violence, evidence of the
16 defendant's other acts of domestic violence is admissible and
17 may be considered for its bearing on any matter to which it is
18 relevant.

19 2. For purposes of this section, "act of domestic
20 violence" means offenses described in s. 741.28.

21 (e)(b)1. When the state in a criminal action intends
22 to offer evidence of other criminal offenses under paragraph
23 (a), paragraph (c), or paragraph (d), no fewer than 10 days
24 before trial, the state shall furnish to the defendant or to
25 the defendant's counsel ~~accused~~ a written statement of the
26 acts or offenses it intends to offer, describing them with the
27 particularity required of an indictment or information. No
28 notice is required for evidence admitted under paragraph (b)
29 or for evidence of offenses used for impeachment or on
30 rebuttal.

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1 2. When the evidence is admitted, the court shall, if
2 requested, charge the jury on the limited purpose for which
3 the evidence is received and is to be considered. After the
4 close of the evidence, the jury shall be instructed on the
5 limited purpose for which the evidence was received and that
6 the defendant cannot be convicted for a charge not included in
7 the indictment or information.

8 (3) Nothing in this section affects the admissibility
9 of evidence under s. 90.610.

10 Section 2. This act shall take effect July 1 of the
11 year in which enacted.

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14 LEGISLATIVE SUMMARY

15 Revises terminology and conditions for admissibility with
16 respect to evidence of crimes, wrongs, or acts. Provides
17 for admissibility into evidence of uncharged crimes,
18 wrongs, or acts inseparable from or inextricably
19 intertwined with the crime charged, under certain
20 circumstances. Provides for admissibility of evidence of
21 other "sexual misconduct" by the defendant under certain
22 circumstances when the defendant is charged with a sexual
23 offense. Provides for admissibility of other "acts of
24 domestic violence" by the defendant in a criminal case
25 under certain circumstances when the defendant is charged
26 with an act of domestic violence. Requires the state to
27 furnish certain notice of intent to the defendant or
28 defendant's counsel regarding the state's intent to offer
29 evidence of criminal offenses or sexual misconduct or
30 domestic violence committed by the defendant. Provides
31 that notice is not required regarding certain evidence of
uncharged crimes, wrongs, or acts inseparable from or
inextricably intertwined with the crime charged.