

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1094

To amend the Federal Rules of Evidence relating to character evidence in sexual misconduct cases, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 10), 1995

Mr. BIDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Federal Rules of Evidence relating to character evidence in sexual misconduct cases, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CHARACTER EVIDENCE IN SEXUAL MIS-**  
4 **CONDUCT CASES.**

5 (a) IN GENERAL.—(1) Rule 404(a) of the Federal  
6 Rules of Evidence is amended by adding at the end thereof  
7 the following:

8 “(4) CHARACTER IN SEXUAL MISCONDUCT  
9 CASES.—(A) Evidence of another act of sexual as-  
10 sult or child molestation, or evidence to rebut such

1 proof or an inference therefrom, if that evidence is  
2 otherwise admissible under these rules, in a criminal  
3 case in which the accused is charged with sexual as-  
4 sault or child molestation, or in a civil case in which  
5 a claim is predicated on a party's alleged commis-  
6 sion of sexual assault or child molestation.

7 “(B) In weighing the probative value of such  
8 evidence, the court may, as part of its rule 403 de-  
9 termination, consider—

10 “(i) proximity in time to the charged or  
11 predicate misconduct;

12 “(ii) similarity to the charged or predicate  
13 misconduct;

14 “(iii) frequency of the other acts;

15 “(iv) surrounding circumstances;

16 “(v) relevant intervening events; and

17 “(vi) other relevant similarities or dif-  
18 ferences.

19 “(C) In a criminal case in which the prosecu-  
20 tion intends to offer evidence under this subdivision,  
21 it must disclose the evidence, including statements of  
22 witnesses or a summary of the substance of any tes-  
23 timony, at a reasonable time in advance of trial, or  
24 during trial if the court excuses pretrial notice on  
25 good cause shown.

1 “(D) For purposes of this subdivision—

2 “(i) ‘sexual assault’ means conduct, or an  
3 attempt or conspiracy to engage in conduct, of  
4 the type proscribed by chapter 109A of title 18,  
5 United States Code, or conduct that involved  
6 deriving sexual pleasure or gratification from  
7 inflicting death, bodily injury, or physical pain  
8 on another person irrespective of the age of the  
9 victim, regardless of whether that conduct  
10 would have subjected the actor to Federal juris-  
11 diction; and

12 “(ii) ‘child molestation’ means conduct, or  
13 an attempt or conspiracy to engage in conduct,  
14 of the type proscribed by chapter 110 of title  
15 18, United States Code, or conduct, committed  
16 in relation to a child below the age of 14 years,  
17 either of the type proscribed by chapter 109A  
18 of title 18, United States Code, or that involved  
19 deriving sexual pleasure or gratification from  
20 inflicting death, bodily injury, or physical pain  
21 on another person, regardless of whether that  
22 conduct would have subjected the actor to Fed-  
23 eral jurisdiction.”.

1           (2) The first sentence of rule 404(b) of the Federal  
2 Rules of Evidence is amended by inserting “except as pro-  
3 vided in subdivision (a)” after “therewith”.

4           (b) METHODS OF PROVING CHARACTER.—Rule 405  
5 of the Federal Rules of Evidence is amended—

6           (1) in subsection (a) by inserting before the pe-  
7 riod in the first sentence “except as provided in sub-  
8 division (c) of this rule”; and

9           (2) by adding at the end thereof the following:  
10          “(c) PROOF IN SEXUAL MISCONDUCT CASES.—In a  
11 case in which evidence is offered under rule 404(a)(4),  
12 proof may be made by specific instances of conduct, testi-  
13 mony as to reputation, or testimony in the form of an  
14 opinion, except that the prosecution or claimant may offer  
15 reputation or opinion testimony only after the opposing  
16 party has offered such testimony.”.

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